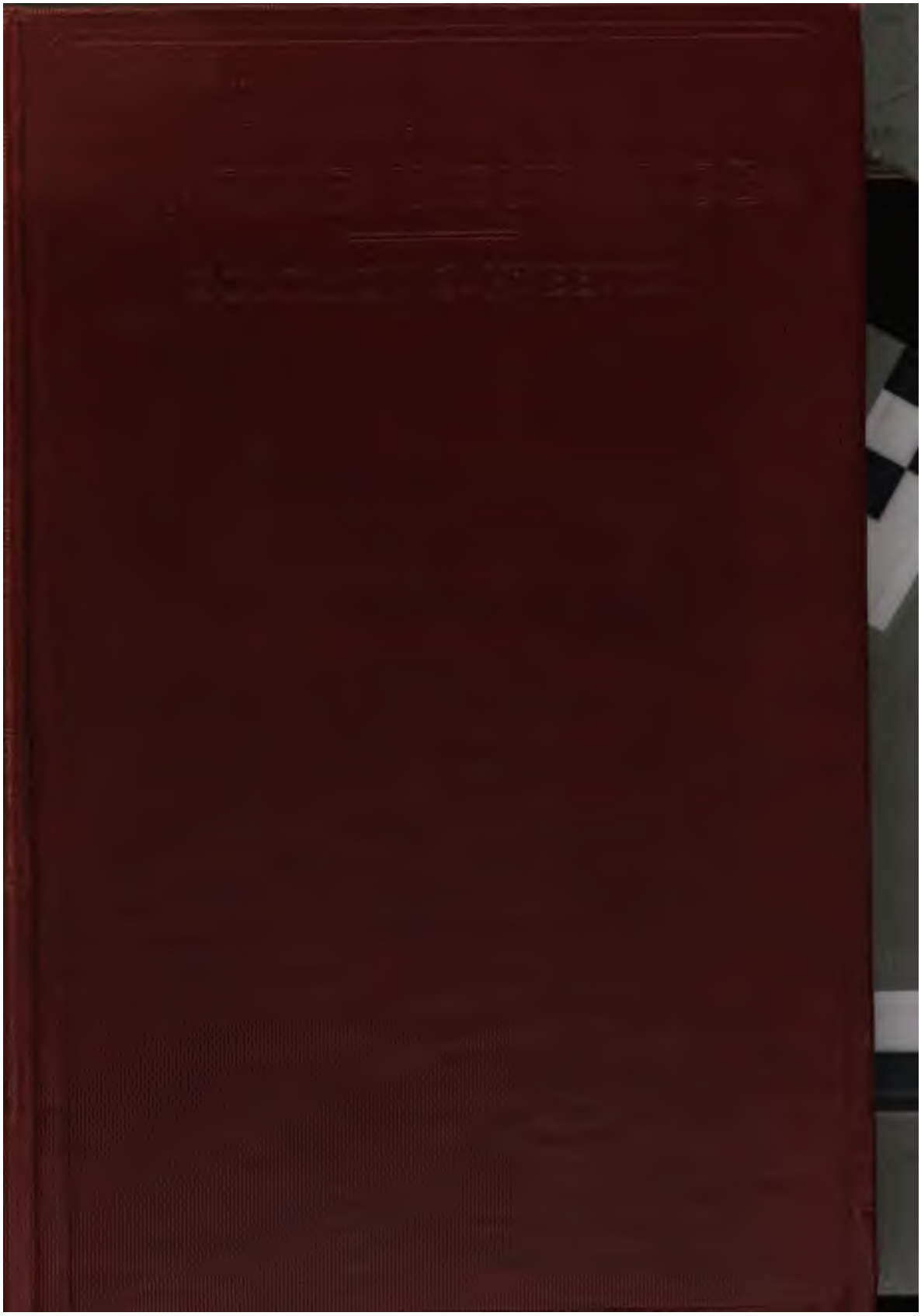

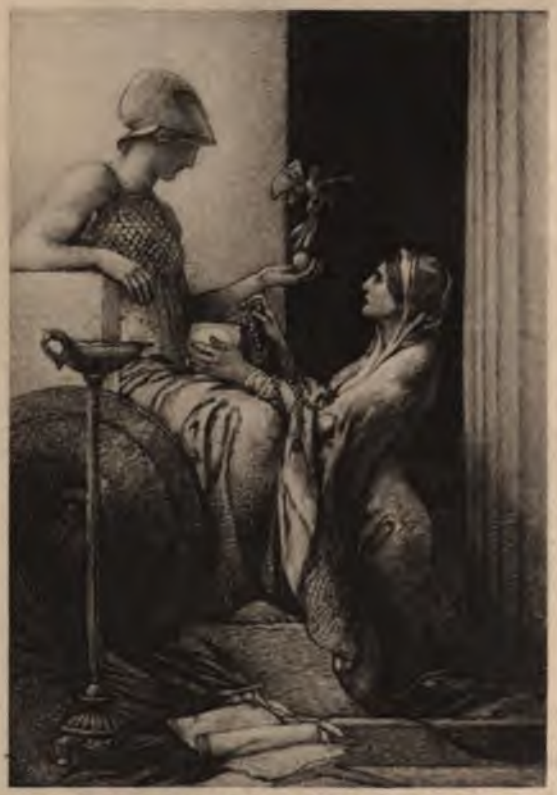

MARINE INSURANCE

By SOLOMON S. HUEBNER, M. S., Ph. D.
Professor of Insurance, University of Pennsylvania

Property Insurance
Life Insurance
Marine Insurance

D. APPLETON AND COMPANY
Publishers New York

MARINE INSURANCE

BY

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PROFESSOR OF INSURANCE AND COMMERCE, UNIVERSITY OF PENNSYLVANIA;
EXPERT IN INSURANCE TO THE UNITED STATES SHIPPING BOARD
AND THE HOUSE COMMITTEE ON THE MERCHANT
MARINE AND FISHERIES

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EDITORS' PREFACE

This is the second volume of a series of manuals dealing with the business of ocean shipping and transportation. The first volume published, "Ocean Steamship Traffic Management," by Professor G. G. Huebner, bore the following Editors' Preface:

"This volume upon the management of ocean steamship traffic is the first of a series of manuals designed to assist young men in training for the shipping business. The necessity for such a series of manuals became evident when, as a result of the great war, the tonnage of vessels under the American Flag was, within a brief period, increased many fold. To carry on the war, and to meet the demands of ocean commerce after the war, the United States Government, through the Shipping Board and private shipyards, brought into existence a large mercantile marine. If these ships are to continue in profitable operation under the American Flag, the people of the United States must be trained to operate them. Steamship companies, ship-brokers and freight forwarders must all be able to secure men necessary to carry on the commercial and shipping activities that make use of the ships. A successful merchant marine requires ships, men to man the ships, and business organization to give employment to the vessels.

"In its Bulletin upon 'Vocational Education for Foreign Trade and Shipping' (since republished as 'Training for Foreign Trade,' Miscellaneous Series No. 97, Bureau of Foreign and Domestic Commerce, for sale by the Superintendent of Documents), the Federal Board for Vocational Education includes among other courses suggested for foreign trade training two shipping courses upon subjects with which exporters should be familiar, namely, 'Principles of Ocean Transportation' and 'Ports and Terminals.' Although such general courses are helpful to the person engaging in the exporting business, a training for the steamship business as a profession requires much greater detail in the knowledge of concrete facts of a routine nature. An analysis was made of the various divisions of the steamship office organization and it was suggested to the United States Shipping Board that as no litera-

ture existed of sufficient practicability and detail, several manuals should be written covering the principal features of shore operations.

"The response of the Shipping Board was hearty. The Shipping Board appointed Mr. Emory R. Johnson of its staff, then conducting an investigation of ocean rates and terminal charges, as its editor. The Federal Board for Vocational Education designated Mr. R. S. MacElwee, then engaged in the preparation of studies in foreign commerce. Before the project was completed Mr. Johnson severed his connection with the Shipping Board in 1919, and in January, 1919, Mr. MacElwee became Assistant Director of the Bureau of Foreign and Domestic Commerce, Department of Commerce. The interest of the editors in the project did not terminate, however, and their close coöperation has been voluntarily continued out of conviction that the works will be helpful.

"The books have been written with a view to their being read by individual students conducting their studies without guidance, also with the expectation that they will be used as class textbooks. Doubtless colleges, technical institutes, and high schools having courses in foreign trade, shipping business and ocean transportation will desire to use these volumes as class texts in a manner outlined in 'Training for the Steamship Business,' by R. S. MacElwee, Miscellaneous Series 98, Bureau of Foreign and Domestic Commerce, Superintendent of Documents, Washington, D. C. It is expected that evening classes and part-time schools organized under the patronage of the Federal Board for Vocational Education, Chambers of Commerce, and other interested organizations will find the manuals useful. Should these volumes accomplish the desired purpose of giving the American people a somewhat greater proficiency in the business of operating ships, they will have proven successful."

This volume upon "Marine Insurance" presents the subject in concise and practical form. It is a convenient manual for students and men engaged in marine insurance underwriting. It is believed that vessel-owners also will find the book helpful. The facts and principles of marine insurance are presented with only such detail as is necessary to an accurate account of the subject. The book is comprehensive without being unduly technical.

THE EDITORS

AUTHOR'S PREFACE

This text is one of a series of volumes designed to assist students training for the marine insurance, shipping, or exporting business. It was undertaken at the suggestion of the editors representing the Federal Board for Vocational Education, and the United States Shipping Board. In making the suggestion the editors were actuated by a desire for a text adapted to the needs of beginners of the study of marine insurance. To fulfill this purpose, it has been the author's object to bring together in compact and classified form the essential facts, principles and practices of the marine insurance business, and to present them in a simple and untechnical manner. The book does not aim to discuss highly technical or isolated aspects of the business, such as the specialist of long training may desire. Instead, its purpose is to treat comprehensively those phases which should be mastered in order to have a clear understanding of the nature and practical operation of marine insurance, and the intimate relationship of the business to shipping, banking, and over-seas commerce.

It has been the author's endeavor to arrange and treat the subject matter in such a way as not only to adapt the volume for class-room instruction, but to make it suitable for individual students who must conduct their study without the guidance of a teacher. The volume also contains all essential forms, and in connection with the several chapters, the students' attention is called to the most important references which deal with the subject under discussion.

The chapters of the text may be grouped into four distinct parts, dealing respectively with the nature and functions of marine insurance, including a discussion of the types of underwriters and the kinds of policies; an analysis of the policy contract; the types of losses; and a discussion of the leading kinds of marine insurance as customarily classified, viz., cargo, hull, freight, and builders' risk insurance. Separate chapters are also devoted to three very important aspects of the business, i. e.,

"Reinsurance Agreements," "Marine Underwriters Associations," and "Rate-Making in Marine Insurance." To a considerable degree the volume contains material gathered by the author in his recent investigation of Marine Insurance for the Committee on the Merchant Marine and Fisheries of the House of Representatives, and the United States Shipping Board, and which was published in part in a Report on "The Status of Marine Insurance in the United States."

The Author has received assistance from numerous persons especially informed on various phases of the subject. To these he is greatly indebted, although space does not permit a detailed acknowledgement. Special acknowledgement is due my colleague, Mr. H. J. Loman, Instructor of Insurance, at the University of Pennsylvania, who read the proofs and generously aided with his advice and criticism.

S. S. HUEBNER

University of Pennsylvania.

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MARINE INSURANCE

CHAPTER I

NATURE AND FUNCTIONS OF MARINE INSURANCE

Nature of Indemnity Promise.— Marine insurance exists to indemnify interested parties against loss, damage, or expense occasioned accidentally in connection with vessels, cargoes, and freight charges through any of the numerous perils incident to transportation by water. The indemnity is promised and defined in a contract commonly known as a "marine insurance policy." Such a policy may be defined as a contractual agreement whereby one party (known as the insurer or underwriter) undertakes, in return for a stipulated consideration (called the premium) and in accordance with definitely expressed restrictions, to indemnify another party (known as the insured or assured) against loss or damage to a defined interest in vessel, cargo, or freight earnings when unavoidably caused by certain definitely enumerated contingencies.

Marine insurance is not intended to indemnify all kinds of losses. Its purpose is to cover fortuitous losses, i. e., those which are accidental in character and beyond the control of the insured. Customary and inevitable loss, such as results from the inherent nature of the goods or the usual wear and tear of seafaring property, or which occurs in connection with the inherent nature of goods or their packing when considered in the light of the particular voyage under consideration, is not a fit subject for protection under a marine insurance contract. Such losses are not the result of an accident, and owing to their comparative certainty, should not serve to increase, abnormally, the size of insurance premiums. Instead, they should be borne by business as a normal item in the cost of operation. Sentimental or aesthetic values likewise are not covered, except by mutual arrangement and when subject to financial valuation. Moreover, losses which are attributable to the negligence of the custodian of the property (the carrier) should not be covered, although

competition has been responsible for serious modification of this principle, as in the case of loss through pilferage. Briefly stated, marine insurance should indemnify — restore the insured to his original position — only such loss and damage as is accidental, unavoidable and unusual. But subject to these conditions the modern marine insurance policy affords a very broad protection. Later chapters will show that nearly every conceivable contingency is assumed. The modern "warehouse to warehouse clause" enables goods to be covered from the time they leave the shipper's warehouse in the interior, through all the various stages of the journey either by water or land carriers, until they are safely delivered to the warehouse of the consignee. In fact it has been said that marine insurance should justly be called "transportation insurance." Judged from this standpoint, it is regarded as essential that a marine insurance policy should not attach to goods after their transportation has been completed, or after they have reverted back to the custody of the insured.

It is also important to bear in mind that a marine insurance policy is a personal contract. Strictly speaking the contract does not insure property, but the persons who own the same or possess some other insurable interest therein. This personal character of the contract cannot be overemphasized and is responsible for many of the restrictions contained in the policy. The term "property insurance" when applied to marine or fire insurance is in one sense a misnomer. Two vessels may be exactly alike, except for ownership, yet the underwriter may have to regard these risks as entirely different since one may be owned by an honest party whereas the other is controlled by a dishonest one.

Services Rendered by Marine Insurance.— Marine insurance is universally recognized as an integral part of modern commerce. Water carriers and shippers of goods by water probably exceed all other business interests in the extent to which they protect their property values through insurance. In the absence of such protection it is certain that general and continuous commerce would either have to cease or be conducted on an uneconomical and unscientific basis. Uncertainty would take the place of certainty and commerce would be reduced to a highly

speculative if not a gambling plane. Freight charges would necessarily have to be made with reference to an uncertain hazard and could no longer be based on a fair, regular, and certain return to invested capital.

Eliminates the Paralyzing Effects of Worry and Fear.— Few enterprises are surrounded by so many serious hazards as maritime ventures. Therefore in the absence of underwriters, who are willing to assume the consequences of such hazards for a definitely stated premium, a paralyzing sense of fear and worry would be general in the shipping industry. Even at the beginning of the 17th century the British Parliament (43 Elizabeth, c. 12) gave expression to this advantage by describing marine insurance as a means "whereby it cometh to pass that upon the loss or perishing of any ship there followeth not the undoing of any one, but the loss lighteth rather easily upon many than heavily upon few, and rather upon them that adventure not than upon those who do adventure; whereby all merchants, especially those of the younger sort, are allowed to venture more willingly and freely."

Again, during the recent international war marine insurance proved so essential to the free movement of commerce, the very lifeblood of nations, that at least half a dozen of the Allied Governments, including the United States and Great Britain, saw fit to enter the insurance business at rates thought to be lower than cost. Vessel owners naturally desire to be protected against the loss of their investment, or of freight charges which may not have been collected in advance. Shippers and consignees likewise need protection, since their goods have been financed with borrowed funds, and since bills of lading usually provide that "freight prepaid will not be returned, goods lost or not lost," and that "full freight is payable on damaged or unsound goods." By thus giving certainty instead of uncertainty to merchants and vessel owners they are enabled to venture more and to enlarge their commercial efforts.

Distributes Losses to the Ultimate Consumer.— In the last analysis all costs in operating any business are reflected in the final price of the article or service. The consumer must ultimately pay all bills, and in commercial transactions this will

include losses through marine disasters. The purpose of marine insurance is to reduce such losses to a statistical basis and to distribute the same equitably over all the interests making up the field of commerce. Vessel and cargo owners are thus enabled to buy certainty with a definitely stated premium. The sum thus paid is regarded as a normal item in the cost of operation, and like any other costs will be included in the price of the goods or service. In this way producers are freed from the burden of carrying uncertain losses, while consumers are made to assume the risks of industry in proportion to the volume of their consumption. This is as it should be, and may be said to be one of the essential purposes of all kinds of insurance.

Causes the Cheapest Distribution of Loss.— Not only does marine insurance distribute losses equitably to the ultimate consumer, but it materially reduces the amount thus distributed. This is due to the operation of the law of average when applied to a combination of a large number of separate risks. The larger the number of risks assumed, the less uncertainty will there be as to the total amount of loss on all the risks combined; and the less uncertainty of loss, the smaller is the accumulation of money necessary from the many who insure to meet the losses of the few.

Were there no system of insurance it is apparent that the owner of a vessel, if obliged to carry the risk himself, would naturally want as a precautionary measure to increase his freight charges by at least ten or twenty per cent. And even then he would be gambling at heavy odds, since an early loss, before his self-insurance fund had reached an appreciable amount, would largely wipe out his equity. Under marine insurance, however, this vessel owner can substitute for the great uncertainty, confronting him as an individual, a certain and definite loss (the premium) amounting on the average to probably not more than one-tenth of the allowance considered necessary under a non-insurance system. The burden of the consumer is limited to this smaller premium, whereas in the absence of insurance it would be substantially increased. By eliminating uncertainty marine insurance greatly reduces the margin of profit wanted in commercial transactions. Merchants are enabled to handle goods on a much narrower margin of return, since they are

assured of their expected trade profits. Vessel owners are no longer compelled to accumulate a substantial fund to meet uncertain hazards; while creditors, assured of the greater financial stability of borrowers, will feel freer to enlarge their loans and to reduce their rates of interest.

Serves as a Basis of Credit.— It has been estimated that about nine-tenths of the property values entering commerce represent borrowed funds, and that only about ten per cent of business is conducted on a cash basis. A lot of cotton, for example, is purchased for $20,000 and is paid for with the purchaser's own capital. If this cotton had first to be shipped abroad and further purchases deferred until remittance of the sales price, only two or three purchases would be possible during the cotton moving season. Instead, this lot of cotton is at once graded, insured, and represented by a bill of lading, and this bill of lading, together with the marine insurance certificate, serves as collateral for a loan of about $18,000. A new lot of cotton may be purchased immediately with this loan, which in turn, after being graded and insured, may again serve as the basis for another loan of ninety per cent of the market value. This process may be continued until the successive cargoes bought on credit, and probably all still afloat, may equal some eight times the original capital of $20,000. The opportunity for profit, it will be seen, is likewise eight times what it would be if business could be transacted only on a cash basis.

The same general process is followed in handling most of the nation's leading products that enter our foreign and coastwise trade. Moreover, on most of these transactions the margin of profit is very small; in fact the size of the insurance premium is often a deciding factor as to whether a commercial venture shall be undertaken. Under such conditions it is clear that creditors must insist that adequate protection shall be taken out against the loss of the goods on which they have a lien. Every bill of foreign exchange is therefore backed up with marine insurance. Insurance of the cargoes makes the credit transactions as certain as though all payments were made in cash.

Standardizes Types of Risks and Creates Justice Between Property Owners.— It is important that types of vessels and

cargoes and the numerous circumstances connected therewith in different voyages and seasons, or under different methods of loading and handling, should be correctly estimated and rated. The difficult task of accomplishing this purpose should be undertaken only by those who make it a regular business, i. e., by those who engage in the marine insurance business. It is only in this way that there can result a correct and just standardization of different types of risks under different circumstances. Marine insurance serves to treat risks scientifically, so that one group of property owners is not unjustly burdened for the benefit of another. There is an approximation of "like rates for like hazards" and justice between all classes of policyholders.

Marine Insurance a National Commercial Weapon.— Thus far attention has been directed solely to the services of marine insurance as a fundamental instrument of commerce. But foreign trade is always a subject of keen rivalry between nations, and emphasis should therefore be given to the importance of the possession of a strong marine insurance institution as a source of national profit and independence, and a powerful weapon for acquiring and controlling important channels of foreign trade.

The necessary servants of exporters and importers are banking, shipping, and insurance, the latter fulfilling "the very vital purpose of protecting and stabilizing the banking, commercial, and shipping factors." To accomplish most, shipping, banking, and insurance (both marine and fire) must be united into some coöperative working arrangement. Continued separation means weakness, lack of national prestige and disjointed action; whereas, union results in prompt and adequate service, a united action to meet competitive situations, and a sense of national independence worthy of the respect of others. Circumstances have favored us in the creation of a large merchant fleet within an incredibly short time. Congress has also legislated in favor of the creation of exporting organizations and the extension of American banking facilities to foreign markets. But shipping and banking are only two of the three vital factors that serve as the foundation of international trade. Marine insurance, adequate in extent and operated under American auspices, is the third factor, and must be united with the other two to make our foreign trade equipment complete.

Appreciating the numerous property and credit connections that radiate from the leading shipping, banking, and insurance interests at practically every center of foreign trade, British commercial interests, for example, have long realized the advantages of coöperation between these three complementary factors, since each can be made to serve and hasten the growth of the others. Not only have British insurance companies been encouraged to unite into huge combinations through actual consolidation or community of interests, but they have been permitted, unlike the practice of this country, to write numerous kinds of insurance with a view to reducing their overhead expenses, to enlarging their underwriting facilities to the utmost, and to enabling them to meet the full insurance needs of their clients. Nor is there the slightest hesitancy in coöperating with other commercial agencies to acquire business. English bankers throughout the world, for example, have arrangements with English insurance companies whereby they provide insurance for their clients — fire insurance to protect their loans on goods while in process of production, and marine insurance to protect their loans when the goods are ready for export. Consult the directorates of British insurance companies and it becomes clear how judiciously the leading shipping, banking, and commercial interests are represented. And then consult the directorates of leading shipping, banking, and commercial interests, and it again becomes clear how judiciously the insurance interests are represented. Each factor helps the others through a proper association of business interests, until the whole foreign trade equipment — shipping, banking, and insurance — is judiciously knit together into one great force capable of pursuing a united and intelligent policy.

The benefits flowing from such united action are many, and merely need be mentioned to be understood. Probably foremost in importance is the power it gives to preëmpt leading lines of trade. This might be accomplished by furnishing clients with their full requirements for all kinds of insurance protection and by affording them a continuous insurance market. When once a certain line of trade has been brought under the influence of one of the three important factors referred to, it very generally follows that the entire course of that trade will be controlled thereafter. But the power of marine insurance may also lie in its

being denied altogether, or in being given only under unfavorable conditions to the citizens of other nations which do not possess adequate insurance facilities of their own. By spreading its insurance agencies to the remotest parts of the earth, Great Britain has afforded to its merchants everywhere the convenience of having underwriting facilities near at hand. Its merchants are therefore free to extend their activities because of the certainty of a continuous insurance market. American underwriters, on the contrary, were never able, until the recent extension of American branch banks to foreign countries, to enter the foreign field to any appreciable extent except through affiliation — an uncertain way to say the least — with foreign branch banks. The existence of a comprehensive national marine insurance institution also greatly facilitates the adjustment of losses. Insurance with a foreign company, it is commonly asserted, generally requires the transmission of papers, eliminates the advantages of personal conference unless the insurer happens to have a personal representative abroad, often produces delay in adjustment and final payment, and in case of failure to agree necessitates a suit in the foreign market to obtain redress.

Possession of sufficient marine insurance facilities, free from foreign control, is also essential for the proper safeguarding of commercial information. Our recent experience with German insurance and reinsurance companies should make unnecessary further proof that marine insurance companies acquire vital trade secrets exceedingly useful to the nations they represent. Underwriters know the cargoes, consignors, consignees, carriers, trade routes, destinations, financial affiliations, and leading contract terms of commercial transactions. Moreover, where reinsurance facilities are so scanty as to require reinsurance with foreign companies, the reinsurer becomes thoroughly conversant with vital business secrets which it might be presumed are known only to the original insurer. There is no doubt that both England and Germany had this phase prominently in mind when they arranged to make themselves independent of all others in the matter of marine insurance. Both deliberately pursued a policy of strengthening their insurance facilities to such an extent as to take care of the largest risks without resort to reinsurance in the international market.

Elements Underlying a Marine Insurance Contract.— Summarizing the essential features of a valid marine policy (following Mr. Gow's outline), it may be described as:

(1) A contract of indemnity.
(2) Made in good faith.
(3) Referring to a defined proportion.
(4) Of a genuine interest in a named object.
(5) Being against contingencies definitely expressed, to which that object is actually exposed.
(6) And in return for a fixed and determined consideration.[1]

Prime Importance of Good Faith.— Fair dealing is an essential requisite of the marine insurance contract, since the underwriter is often located thousands of miles from the vessels or cargoes he is asked to insure, and usually is called upon to assume the risk on the basis of information which for the moment cannot be investigated in detail. Absence of good faith on the part of the insured would therefore make the contract one-sided and extremely unfair. Customarily the insurance is based upon a printed form of application,[2] the respective portions of which set forth the approximate date of sailing, the names of the insured and payee, the amount of the insurance and the valuation of the property, the limits of the voyage, the character of the property covered, and the special conditions that are to govern the insurance. Good faith requires that, with reference to all these particulars, the applicant should impart all matters of importance to the underwriter. The underwriter, however, is privileged to make such further inquiries as he may see fit before accepting or declining the risk, or before quoting a rate. Any offer made by the underwriter, it should be noted, is good only for a reasonable time, and should therefore be accepted by the applicant within such time limit.

Necessity of an Insurable Interest.— The basic idea of marine insurance being indemnity, it is essential that all parties to the contract should have an insurable interest in the vessel, cargo, or other property insured, i. e., they should derive a benefit from the safe arrival of the subject matter insured, or should

[1] William Gow: *Marine Insurance* (2d ed.), 11.
[2] For sample copy of the application, *see* Appendix III, 212.

suffer injury through its loss or damage. The insurable interest referred to may be "vested," "expectant," or "contingent." It must represent a provable relation between the insured and the property protected under the policy, or must constitute such a relation of agency as will justify one person in negotiating insurance for another who possesses an insurable interest. Any other standard will make a marine insurance policy a gambling contract, void at law, and in some of our states contrary to statute.

Justifiable instances of insurable interests are numerous and leading examples deserve special mention. Owners possessing a legal title to vessels or cargoes, and mortgagees or other lenders of money thereon have an insurable interest to the extent of the value of the property, or to the amount of their loans. Where the ownership of vessels is divided into shares, the managing owner may insure in his own name, although he is but one of the owners and has merely been entrusted with the management of the vessel. In fact, such managing owner may be especially charged with the duty of negotiating the insurance in his own name, but "for the account of whom it may concern." The charterer of a vessel possesses an insurable interest in the earnings of the vessel as well as in the profits expected to be made over and above the hire paid. He also may insure the vessel in his own name, where, under the charter party, full responsibility for the vessel has been assumed. Lenders under bottomry or respondentia bonds[3] also possess an insurable interest to the extent of the loan, while the borrower under such bonds likewise has an interest to the extent that the value of the property exceeds the amount of the loan, but only to this extent, since in case of loss he is relieved from repaying the loan.

Among other leading examples there may be mentioned the insurable interest of commission merchants in the expected profits or commissions which they hope to make if the cargo

[3] Such loans are rarely met with to-day. They are made to cover disbursements at a port of refuge in order to enable the vessel to complete the journey, and are effected on the security of the vessel, or cargo, or both. Should the property be lost it is understood that the borrower is free from liability to repay the loan, the loss falling entirely on the lender. Sometimes, however, the bond may stipulate that the borrower shall be relieved from liability for the debt only in case of loss through certain specified perils. As regards all other perils, the borrower then possesses an insurable interest to the full value of the property.

in question reaches its destination in sound condition; of trustees in bankruptcy and assignees for the benefit of creditors where the owner of property becomes bankrupt or makes an assignment; of consignees to the full value of goods shipped to them for sale and at their risk; of agents who are vested with authority to negotiate insurance for their principals; of common carriers for the property left in their custody, and for the safe delivery of which to the consignee, they are made responsible by law, or where, although not legally liable, they have voluntarily assumed responsibility, or have agreed to effect insurance on property transported over their own or connecting lines; and of contractors when assuming liability for certain risks to vessels while left in their repair yards. Lastly, as will be explained at length later, underwriters frequently find it necessary to reduce their assumed risks by re-insuring a part thereof with other underwriters. Such underwriters possess an insurable interest in the property originally insured, which entitles them legally to insure again (reinsure) either all or part of the risk. But in such instances it is important to note that the owner of the property has no legal interest whatever in such contract of reinsurance.

An Agreement Based on a Consideration.— Not only must the minds of the contracting parties have met with reference to the protection of a clearly defined interest under definitely stated conditions, but there must be a valid consideration. Hence, all marine insurance contracts make provision for the payment of a premium. The adequacy of this premium is of no legal importance, so long as there has been a definite understanding in the matter. Inadequacy of the premium furnishes no excuse to the underwriter in the event of loss, unless there is a special arrangement to the contrary in the policy. It is for this reason, as will be explained later, that underwriters may seek to protect themselves against radically unforeseen changes in circumstances (such as the outbreak of a war), following the writing of the policy, by inserting a special clause in the contract which grants them the privilege of increasing the premium charge.

Implied Warranties Protecting the Underwriter.— These are conditions which, although merely *implied* and not actually expressed in the policy, must nevertheless be complied with by

the insured "absolutely and literally," or the policy will become void from the moment of non-compliance. By using the term "warranty" it is meant to convey the idea that the validity of the contract depends upon "literal truth or fulfillment" of the conditions involved, and not merely their "equitable and substantial fulfillment." The implied warranties referred to are three in number and serve again to emphasize the prime importance of good faith in marine insurance. Although not expressed in the contract they are understood and serve as a protection to the underwriter, who is usually far distant from the risk he is asked to insure and who should therefore be privileged to assume the existence of certain facts with the knowledge that any deception in connection therewith will render the policy null and void. Briefly stated these implied warranties guarantee:

Seaworthiness of the Vessel.— The vessel must be "seaworthy" in all respects for the intended voyage at the time of starting. In other words, the hull and machinery of the vessel must be in proper condition. The vessel must be sufficiently coaled and provisioned and must be sufficiently and efficiently manned and officered. It must be "cargo worthy," i. e., adapted to carry the particular kind of cargo under consideration. The cargo must be properly stowed and there must be no overloading. And with reference to all of the above particulars the vessel must be rendered seaworthy at the beginning of each distinct stage of the voyage, as, for example, when part of the trip is by river and part by ocean. In cargo policies, however, as distinguished from hull policies, this warranty is not interpreted literally, because an innocent shipper might suffer loss, due to a fault over which he had no control and concerning which he may have had no knowledge whatever.

Legality of the Venture.— The purpose of the venture must be legal in all particulars. This means that the vessel will conform with all legal requirements regarding her papers and will refrain from engaging in unlawful trade. Insurance which protects commerce conducted in violation of national and international law is contrary to public policy and should neither bind the underwriter nor be tolerated by law.

Unnecessary Deviation Prohibited.— The vessel must proceed in the usual way directly and without deviation or unnecessary

delay from the port of departure to the port of destination. Deviation from the customary route, however, is allowed where permitted or required by the policy, where made necessary by overpowering circumstances, where undertaken to protect the insured property, or to save life and property on a vessel in distress, or where occasioned by a barratrous act or by some other peril covered by the policy. Should an unavoidable deviation have occurred and the cause of the same have disappeared, the insured vessel is obliged again to resume the regular voyage without delay. Failure to comply with this condition will constitute another deviation which will make the policy null and void.

Legal Rules Governing the Interpretation of the Contract.— Marine contracts are general in character and are not prepared to meet all the details connected with the hundred and one varying circumstances surrounding the risk underwritten. Special agreements are therefore necessary, and there is probably no branch of insurance where special clauses and endorsements are so numerous as in marine insurance. Ambiguity in wording, statutory requirements, and varying circumstances surrounding losses are apt to make the contract a frequent subject for legal interpretation. Generally speaking the courts have shown a reluctance to sanction forfeitures. As a guide to interpreting the innumerable cases that are constantly being added to the already vast mass of insurance law, certain clearly defined rules of construction have been adopted. Briefly summarized these rules are:

The Customs and Usages of Trade May Be Invoked to Explain the Intention of the Parties to the Marine Insurance Contract.— By its very nature, marine insurance is closely identified with the customs and usages of merchants as regards any particular trade, but their statement in full in the policy is clearly impracticable. It therefore frequently happens that proper force can be given to the contract only by applying the usage that prevails in the particular trade or voyage covered by the policy. The parties to the contract may, if they see fit, expressly waive such usage by agreement. But where the intention of the parties may not fairly be implied from the language used, the ordinary practice prevailing in the trade may be regarded as indicating

the proper intention. Similarly, technical words or phrases must be given the meaning which customarily attaches to their use in the marine insurance business or in allied commercial transactions.

Ambiguous Language in the Contract is Construed Favorably to the Insured.— This means that the benefit of the doubt, where more than one view is possible and where custom or usage does not determine the matter, is given to the insured. The principle is based on the idea that the underwriter prepared the contract and is therefore responsible for the ambiguity involved.

The Formal Written Policy as Accepted by the Insured Comprises the Entire Contract.— Oral or written arrangements, effected prior to the execution of the formal contract, cannot be read into the policy unless the contrary has been provided for in the contract through some definite descriptive reference. To this general rule the application, upon which the policy is based, which is signed by both parties and which usually contains a portion of the special clauses appearing in the contract, would seem to be an exception. But the application is made almost invariably on the underwriter's own form. In such cases it would therefore seem fair that the underwriter should be compelled to observe the application that bears his signature.

Written or Stamped Portions of the Policy Supersede the Printed Part.— Such written or stamped portions are extremely common in marine insurance and are necessary to record certain data and to give expression to certain special arrangements upon which the policy is based. Their presence is the cause of frequent disputes, sometimes because the language used lacks the well-known meaning of the printed form of the policy, and at other times because the wording of the endorsement is such as to invalidate the printed policy itself. Whenever there is a difference in meaning between such endorsements and portions of the policy form itself, it is a recognized principle that the superimposed parts of the contract take precedence over the regular provisions of the policy. The principle is based on the theory that anything endorsed on the policy implies special consideration and represents the latest agreement between the parties. Should any ambiguity exist in the wording of such endorsement the insured must again be given the benefit of the doubt.

The Policy, as a General Rule, is to Be Interpreted According to the Law of the Place Where Made.— In this connection the Supreme Court of the United States has decreed that a contract made by mail in one state is not subject to the law of another state in which it is to be executed. The principle is especially important in connection with certificates of insurance[4] which are issued against insurance contracts and which, in order to be valid, require the countersignature of the agent, who may reside in another state. Manifestly the law of the state where the certificate is countersigned would control if the issuance of the certificate be regarded as the making of a contract of insurance. But the countersigning of the certificate is regarded only as a method of giving legality to an evidence of a policy already in existence — the proper viewpoint. It follows that the interpretation of the policy is still controlled by the law of the state where the contract was made.

REFERENCES

GOW, WILLIAM: *Marine Insurance: a Hand Book.*
Chap. V: "Insurable Interest."
VIII: "Principles of Interpretation of the Policy."
HUEBNER, S. S.: *History of Marine Insurance in the United States. Yale Readings in Insurance,* ii, 294-331.
HUEBNER, S. S.: *Report on Status of Marine Insurance in the United States,* Washington, 1920.
Chap. I: "Marine Insurance a National Commercial Weapon."
II: "Volume and Classification of the Business."
III: "Extent of Foreign Control."
TEMPLEMAN, FREDERICK: *Marine Insurance: Its Principles and Practice.* London, 1918.
Pages 5-11: "Implied Warranties."
Chap. X: "Expressed Warranties."
WINTER, W. D.: *Marine Insurance: Its Principles and Practice.* New York, 1919.
Chap. V: "The Contract of Marine Insurance. Rules for Construction."

[4] For a sample copy of a marine insurance certificate, *see* Appendix VIII, 235.

CHAPTER II

TYPES OF UNDERWRITERS

Seven types of insurers (or plans of insurance) furnish the world's marine insurance to-day. Briefly enumerated they are: (1) Stock companies; (2) mutual companies; (3) Lloyd's of London; (4) Lloyd's associations composed of individual underwriters who transact business through an attorney; (5) mutual shipowners' associations or clubs; (6) government plans; and (7) self-insurance.

Stock Companies.— By far the largest share of American marine insurance is transacted by this type of company. Some confine themselves strictly to a marine insurance business, while others are fire-marine companies, i. e., write fire insurance in conjunction with their marine business. The distinguishing feature of stock companies lies in the fact that they are owned and controlled by stockholders and are operated to yield profit to the owners. In other words, liability is assumed by the company in its corporate capacity; a definite premium is charged and the consequences must be borne by the insurer alone, should losses exceed the premium income.

In a business so hazardous as marine insurance it is only natural that there should have been an overwhelming tendency on the part of the insuring public to place reliance in corporate underwriting. Through the accumulation of large assets, corporations can offer to the public a condition of financial strength far in excess of that which can be attained by individual underwriters. Aside from good service, the great stock in trade of a marine insurance company, just as is the case with banks and trust companies, is a large surplus over and above all liabilities. The assets of a company must, of course, equal the "unterminated" or "unearned premium reserve," and the reserve for estimated and unadjusted losses. The first refers to the aggregate portion of the premium income representing

the unexpired term of the policies assumed. This the company may not yet consider as its own, because premiums paid in advance are earned only gradually as the assumed contracts approach maturity. The second reserve must be set aside, because in marine insurance much time often lapses by way of adjusting a loss between the time of its occurrence and the final payment. But over and above these two items are the "capital stock" and the "surplus," the two together constituting a fund available to policyholders should extraordinary losses exhaust the "reserve" items. These two funds — the capital stock and the surplus — stock companies will at times make extraordinarily large in order to inspire confidence in their unquestioned safety. All other things being equal, there is a natural disposition for the insured to select a company which is financially the strongest. The funds comprised under capital stock and surplus are not idle, of course, but are invested in interest or dividend-bearing securities, and the income account of many companies thus shows a large investment return in addition to their underwriting profit. What this means was clearly indicated by *The Statist* some years ago, when it referred as follows to the strong position of British marine companies, a considerable number of which have been in existence from fifty to seventy-five years, and some even longer:

> The financial position of nearly all the British marine companies is of such strength that even an unusually long period of adversity could be faced with equanimity. By a long process of limiting dividends, they have acquired funds so large that policyholders are most adequately secured, while at the same time the interest earnings are sufficient, or nearly sufficient, to provide for the maintenance of the present rate of dividends to stockholders. Thus even very moderate trade profits are amply sufficient steadily to increase the financial security. . . . The invested funds represent over £2 for £1 annually received from policyholders. In fact, the financial position of most of the offices is so strong that temporary profit fluctuations may be disregarded, and in many cases present dividends could be maintained if the company undertook no more business whatever.

Not only has competition caused stock companies to exert every effort to improve their financial standing, but policyholders in such companies have the advantage of easy access to the annual financial statements which all must file for publication with the insurance departments of the states in which they transact business. Policyholders are thus enabled to judge for themselves.

It is also asserted that the self-interest of the stockholders, since their own investment is at stake, is a guarantee that the company will be wisely and successfully managed. It is also urged that a good stock company leaves nothing uncertain, the policyholders knowing just what their insurance will cost, since everything is guaranteed. As one supporter of stock company policies writes: "They are plain business contracts which tell their whole story upon their face, which leave nothing to the imagination, borrow nothing from hope, require definite conditions, and make definite promises in dollars and cents."

Mutual Companies.— In striking contrast to the stock plan is the mutual company, which is organized for the benefit of its policyholders and not for the profit of stockholders. At present only one such company operates in the United States, but this company stands in the very forefront of the business and has had a long successful career. The success of such a company will necessarily depend upon its managerial personnel, and the limited number of such companies is not a conclusive argument against the principle of mutuality in marine insurance. Too often in the past the trouble has been that merchants who organized such companies and interested themselves in the management failed to realize that success in their own business did not mean a corresponding success in the hazardous and totally different vocation of marine underwriting.

Mutual companies, like their stock company competitors, have followed a policy of accumulating a surplus, and are subject to the same state supervision. Their financial reports are also available to any one who may be interested. Moreover, such companies should not be confused with shipowners' mutual associations or clubs, which are assessment societies. In a mutual company no assessment liability exists in case of business reverses, the policyholder's loss being limited solely to a forfeiture of any undistributed profits which he may have standing to his credit on the books of the company. In fact, the underlying idea of the mutual company plan is not to distribute profits in the early years, but to pile up a surplus by representing accumulated profits with scrip, which is distributed year after year to the policyholders in lieu of cash. Should the company prove sufficiently successful the trustees can commence the

redemption of the earlier issues of this scrip. Should the reverse condition prevail, however, the scrip certificates provide that they can be canceled or scaled down. Accordingly, since the redemption of the scrip lies with the trustees the company can retain its profits as working capital. This is radically different from an assessment plan, whereby an assessment levy is made upon policyholders to reimburse the association for losses paid in the past.[1]

Lloyd's of London.— This famous organization represents the greatest body of individual underwriters in the world. Its great importance in marine insurance from an international standpoint justifies an explanation of its organization and purposes. Until 1871 Lloyd's was an unincorporated body where underwriters assembled and transacted business at will, subject to few regulations. In the year 1871, however, Lloyd's became an incorporated body; and according to the Act of Incorporation exists for the threefold purpose of conducting an insurance business, of protecting the commercial and maritime interests of its members, and of collecting and disseminating information pertaining to shipping.

As an organization, Lloyd's resembles our stock exchanges in many respects. It assumes no responsibility whatever for the solvency of its members. It seeks only to provide

[1] For a full account of the organization of a mutual company, the distribution of its earnings, and the issuance and redemption of its scrip, *see* William D. Winter, *Marine Insurance: Its Principles and Practice*, pages 354-55. It might be added that the scrip certificates referred to above are issued in negotiable form. As Winter explains: "They certify that the assured, his heirs, administrators or assigns are entitled to so many dollars of the earnings or profits of the said insurance company, the certificate to be redeemable at the pleasure of the trustees of the company and to bear interest in the interim at a rate not to exceed, say six per cent. . . . These scrip certificates found a ready sale in the security market, their value and salability depending, of course, on the financial standing of the company issuing them. These documents thus became a liability of the company, except in so far as they could be reduced or canceled if the company became financially embarrassed, but the company retained as working capital the profits represented by these certificates until they were redeemed. After several annual issues of these scrip certificates had been made, it was customary for the trustees of the company to order the redemption of the oldest issue, the certificates being surrendered to the company in exchange for cash equal to their face value. From the time the annual redemption of certificates commenced the new issue of scrip which became a liability of the company would be offset, in part at least, by the redemption of a previous issue, which thus ceased to be a liability of the company."

proper facilities to its members for the convenient conduct of their business and to limit admission to men of recognized honesty and financial standing. As a guarantee for the fulfillment of contracts each underwriting member is required to make a certain deposit of securities with the Committee of Lloyd's. Aside from this requirement the corporation does not concern itself as to the nature or the volume of the business transacted by its members. They are free to do as much underwriting as they like and may pursue any kind of insurance they choose, only they must act honestly. As a consequence Lloyd's, although marine insurance constitutes the bulk of its business, is a place where one may insure against a very large variety of other contingencies — fire, employers' liability, and all sorts of accidents, against the risks of journeys and business ventures, against the loss of works of art and valuable possessions, against the loss of gate receipts through unfavorable weather conditions, or to meet contemplated changes in foreign tariffs, or to provide against the risks of war during periods of political excitement, and a hundred and one other contingencies of every conceivable kind. A very considerable part of the business transacted by Lloyd's members in the United States consists of risks so hazardous, or so unusual in nature, that no other insurer can be found. It is often stated, and with truth, that Lloyd's serves as the world's market for unusual risks that cannot be placed elsewhere. In fact, these odd forms of insurance have given the institution a notoriety, among the uninformed, which has frequently had a tendency to minimize the importance of its major activity, viz., marine insurance.

In its daily routine of business Lloyd's affords an interesting and instructive spectacle and illustrates the arbitrary character of a large share of its business. On the Exchange are several hundred underwriters, all acting in their individual capacity and not jointly. The making of the contract will usually take the following course: The owner of a vessel or cargo desiring insurance will secure the services of a broker who has access to the Exchange. This broker will pass before the desks of the various underwriters and place before them a so-called "slip," which is the proposal of insurance and which contains a memorandum of the principal clauses desired in the policy and other

particulars attaching to the risk. Upon this slip each accepting underwriter will sign his initials and indicate thereafter the amount he is ready to assume. In this way it is not uncommon to secure the acceptance of from fifty to one hundred different underwriters on a single risk, each agreeing to carry a limited portion of the total insurance involved.

The amount assumed by each underwriter is usually not large, since it is the desire of underwriters to spread their risks — to assume a little on each of many risks, rather than a large amount on each of a few ventures — in order to secure the greater certainty that comes fom the application of the law of average. When the policy (Lloyd's form)[2] is finally issued, it will bear the signature of each of the underwriters who initialed the original slip, and after each signature will be recorded the amount of his personal liability. For all practical purposes, however, the insurance is closed, and the voyage may be begun as soon as the slip has been initialed for the requisite amount of insurance. The actual issuance of the policy is only a formal detail. Although the policy itself is the only document recognized by the courts, the initialed slip is recognized as an "honour agreement," and no member of Lloyd's would think of violating the implied promise. It should also be noted that the operations of Lloyd's members are not limited to their own financial resources. Outsiders, although not permitted to act directly in the work of underwriting, may nevertheless participate indirectly by offering their capital to an underwriting member and sharing in the profits of the business. In this way a very much larger share of the nation's capital contributes to the work of Lloyd's than would be the case if transactions had to be limited to the aggregate personal resources of the members.

In recent years there has been a disposition to economize in the time required to effect insurance among so many individual underwriters, especially where insurance is placed in distant markets. Accordingly, various groups of underwriters now organize themselves into syndicates and fully authorize some syndicate manager or agent to act for them as a collective group. This manager or agent is empowered to accept a stipulated volume of insurance on any given risk, which is then apportioned

[2] For sample copy, *see* Appendix IV, 214.

among the members of the group according to the terms of the syndicate agreement. To illustrate, the writer has before him a policy calling for a total of £7650 insurance. This amount was assumed by 249 individuals, organized into 24 syndicates. Each group is represented in the policy by a stamped endorsement (the 24 endorsements being scattered over the vacant portions of the policy), containing the names of the members, the proportion assumed by each member, and the signature of the agent or manager. It may be added that the largest amount assumed by any group was £1600 and the smallest assumption £10, while each of twelve groups underwrote only £125 or less. The following two examples, selected from the aforementioned 24 instances, will illustrate the nature of these endorsements:

£600

E. W. Richardson	two ninths	
A. J. Richardson	one ninth	
B. H. Foulger	one ninth	of six hdd. pds.
H. Munt	one ninth	Per signature of
W. J. H. Brodrick	one ninth	agent.
J. M. Cazenove	one ninth	
Home Gordon	one ninth	
A. J. L. Circuitt	one ninth	

£500

A. L. Stuge	5/30ths	
W. H. Lazenby	1/10th	
R. F. A. Riesco	1/10th	
Kenneth Bibby	1/10th	
Harry Holmes	1/15th	Five hdd. pds.
E. B. Richardson	1/15th	Per signature of
T. L. Devitt	1/15th	agent.
Reginald Holmes	1/15th	
C. N. Brown	1/15th	
E. P. Sturge	1/15th	
Francis Wimbush	1/15th	
H. J. Letts	1/15th	

As a result of the procedure just described, it follows that the underwriter at Lloyd's has comparatively little opportunity to examine the risk as he would do in most other branches of insurance. The sources of information which he uses as a guide, are, as a rule, the publications of Lloyd's or his own private records. From these he may obtain useful information concerning the age, size, structure, equipment and management of the vessel as based on frequent surveys by expert

surveyors. But such classifications have their limit and do not aim to give more than a general description of the vessel in question. Concerning many factors relating to stowage, the amount of load, the size and efficiency of the crew, and numerous other facts equally vital to the safety of the vessel and cargo at sea, these publications can offer little assistance. It is here that the insurer must use his judgment, and success is largely dependent upon the specialized ability of the underwriter. Nor would it be to the interest of the insurer at Lloyd's to make such an examination, assuming that he could do so. Not only would his limited time and the large number of proposals made to him daily render this impossible, but the mere fact that probably half a hundred other persons have underwritten the same policy will make it seem foolish that he alone should undertake the examination. To retain his business he must be quick in accepting or rejecting proposals on the spot, and cannot afford to tarry, since it is the broker's business to secure insurance for his patrons as quickly as possible. Moreover, the amount of the total risk to which he subscribes is comparatively small and usually limited to an amount which will not make it worth his while to pursue a detailed examination.

Even if the underwriter be a subscriber for a large amount, it does not necessarily follow that he will actually be liable for the amount underwritten, for as soon as he fears that he is likely to sustain a loss he will endeavor to transfer his risk. This he does by offering a higher premium as an inducement to someone else to take all or a share of his risk. One underwriter fearing a loss thus transfers part of his risk to another. If uncertainty concerning the vessel continues, both underwriters, by offering a still higher premium, may transfer part of their risk to others, who again have good hopes, and so on until, if it finally develops that the vessel and cargo are lost, the risk has been so widely diffused that the loss incurred by any one individual is comparatively small.

Lastly, a brief description should be given of Lloyd's publications and intelligence service, since the collection and diffusion of maritime information is essential to prompt and successful underwriting. Briefly described, this service consists of numerous agents, situated in nearly every part of the world, whose

position is considered one of honor and whose duty it is to forward promptly to headquarters information concerning the arrival and departure of vessels, the occurrence of wrecks and accidents, or any other events which vitally affect shipping. As representatives of Lloyd's, these agents are also required to render aid to vessels in distress, to take charge of a wrecked vessel's stores and materials in order to avoid unnecessary loss, to adopt precautionary measures against dishonesty when it becomes necessary to repair ships, and in a general way to protect the interest of the marine underwriters. To supplement the efforts of these agents Lloyd's also desires the masters of vessels to report to the nearest Lloyd's agent any information of interest concerning ships which they may have seen or spoken with while on their voyage. All the information obtained from agents and shipmasters is then analyzed and distributed for the benefit of underwriters and subscribers in four leading publications.[3] These are:

(1) *Lloyd's List.*— The official daily publication of the corporation containing shipping news as currently received, and generally recognized as the most reliable among the various sources of maritime intelligence.

(2) *The Index.*— A list of all British mercantile vessels, together with numerous foreign ships, showing their condition and location according to the latest reports. Subscribers of Lloyd's, wherever situated, may upon request obtain the latest news concerning any particular vessel.

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[3] During the recent war publication of *Lloyd's List* and *The Index* was discontinued. *Lloyd's Register of British and Foreign Shipping* was also published until recently by Lloyd's, but at present this publication is issued by the Society of Lloyd's Register. This society is a separate organization, and represents not merely Lloyd's, but shipowners' associations, insurance companies, and other commercial bodies. The predominating interest in the society, however, is the corporation of Lloyd's. Lloyd's Register enjoys a world-wide use in insurance, shipping, and commercial offices. It furnishes a statement of the leading characteristics of British vessels of not less than 100 tons, as well as numerous vessels of other nations. The information furnished relates to the name of the vessel, materials of construction, state of repairs, and dimensions, registered tonnage, general equipment, date and place of construction, name of the builder and owners, the port to which the vessel belongs, the date of the last survey, and the name of the master and the date of his appointment. Most other leading commercial nations have also adopted a similar plan of classifying vessels. For a specimen page of Lloyd's Register of British and Foreign Shipping, *see* Appendix XI, 242.

(3) *Register of Captains.*— A biographical dictionary, containing a record of the service, proficiency, and character of the thousands of certified commanders in the British marine.

(4) *Record of Losses.*— Frequently called the *Black Book.*

American Lloyd's Associations.— Aside from the business conducted by Lloyd's of London there is very little individual underwriting in the United States. In fact, the practice is limited in a modified form to a comparatively small number of American Lloyd's associations, and even these are declining in number and importance. While named after their more illustrious prototype, their organization is radically different. They may be defined as voluntary partnerships in which each member usually agrees to hold himself individually liable for the payment of losses on a given line of insurance up to a specified amount only, although in some instances the individual liability is "unlimited." In most cases, therefore, the value of the insurance depends upon the financial strength of the individual members in the partnership, though in some instances greater security is offered in the form of a guarantee fund which is available for the payment of losses. These organizations also fail to give to the insuring public the benefit resulting from the strict disciplinary code imposed upon its members by Lloyd's of London. It should be added that the policy is issued for all the members constituting the association by their joint attorney.

Shipowners' Mutual Associations or Clubs.— It is frequently the practice abroad, particularly in England, for shipowners to band together in associations or clubs for mutual protection against marine disaster. Such organizations are essentially assessment societies, since at the end of a stipulated period, usually a year, the total loss paid is ascertained, and a levy is assessed over the various members in proportion to the tonnage each may have entered in the association. A low expense cost is the chief advantage, especially since the organization is not operated for profit-making purposes. But against this gain is the element of uncertainty, the assessment levy varying from year to year, according to the fluctuating record of losses. It is for this reason that many owners prefer to insure with companies or with Lloyd's at a definite premium, and thus know in advance

the exact extent of their liability. Again, where vessels are new or of high class, owners may be reluctant to join such associations, preferring to insure where the underwriter recognizes the merits of the vessel. In other words, they are opposed to having the identity of their vessel lost through a merger with numerous other vessels, many of them inferior, and at the end of the year be assessed in proportion to tonnage, irrespective of the quality of the property.

Aside from the risks relating to vessels, however, there is the owner's liability for property and personal damage to third parties. Reference is had to the legal liability for vessel, cargo, and life resulting from collision with another vessel or from running against piers and docks. Such disasters may often reach the proportions of a catastrophe, and it is only natural that vessel owners should seek to free themselves from responsibility for legal damages arising out of such accidents. As will be explained later, marine policies often contain a collision clause which covers three-fourths of the property liability to other vessels and their cargoes. But the remaining one-fourth and the life-liability are not covered as a rule. Accordingly these two items are usually insured in some vessel owners' mutual insurance association, also commonly called Protection and Indemnity Clubs.

Government Plans.— Owing to the enormous war hazard of the last few years eleven national war risk bureaus were established within a few weeks following the commencement of hostilities, viz., in Belgium, Denmark, France, Germany, Greece, Great Britain, Italy, Japan, Norway, Sweden, and the United States. Great Britain, almost immediately upon the outbreak of the war, found it necessary to maintain her overseas trade by furnishing marine insurance to her own as well as American mercantile interests. The submarine and mine hazard caused marine insurance rates to reach such prohibitive figures as to make it virtually impossible for exporters and importers to negotiate their necessary protection. It was only natural, therefore, that the British Government should undertake the assumption of the risk at rates much below cost.

The Bureau of War Risk Insurance of the United States Treasury Department was established on September 2, 1914, with the avowed purpose of enabling American interests to

secure adequate war risk insurance at reasonable rates. Before this country's actual entrance into the war, the Bureau refused to insure cargo that might be considered contraband. On March 31, 1917, however, cargoes classed as contraband were accepted, thus constituting a recognition of a practical state of war with the Central Powers. On June 12, 1917, provision was made for the insurance of vessels flying friendly flags or their cargoes. From the creation of the Bureau to July 30, 1918, $1,245,000,000 of marine insurance was written. Paid-in premiums aggregated somewhat over $43,000,000 during the same period, and losses amounted to slightly less than $29,000,000. It should be added that the United States Shipping Board also undertook the insurance of its own vessels, and that the Emergency Fleet Corporation and the United States Railway Administration also adopted self-insurance plans. In these plans the government cared for a substantial portion of the nation's marine insurance during a critical period and admittedly exercised a steadying effect on rates.

Self-insurance.— Our list of insurers would not be complete without reference to the practice of certain owners, mainly large corporations, of insuring their vessels themselves under a fund created especially for the purpose. In other words, there is self-insurance instead of a transfer of the risk to an outside independent underwriter. In one sense the owner may be considered as "running his own risk," yet it would be more accurate to regard any real plan of self-insurance as based upon scientific considerations rather than upon haphazard guesswork.

Safe use of the plan is necessarily limited to owners whose vessels are so numerous and so evenly distributed in value as to make the law of average applicable. Even where the advantage of numerous risks presents itself, it is customary to self-insure only the less valuable items and to use outside insurance for all vessels which are so costly as to make a single loss sufficient materially to exhaust the self-insurance fund, or otherwise cripple the financial standing of the company. Moreover, the creation of the owners' internal fund should be gradual, i. e., there should not be a sudden transfer from outside insurance to self-insurance. Usually an insurance fund will take years to accumulate scientifically to the proper amount. The method

pursued should consist of a gradual decrease in the liability insured in outside agencies, and a corresponding increase, until the internal fund has been built up to what is regarded as a sufficient guarantee, in the self-assumed liability. To make a sudden transfer from one hundred per cent outside insurance to one hundred per cent self-insurance is very unscientific in that a loss of large proportions in the early stages will much more than wipe out the self-insurance fund. It takes time to build up such a fund, and successful accumulation is chiefly dependent upon good fortune in not meeting with a staggering loss in the early stages. Even where a fund has been gradually built up to an adequate total, it is the policy of some corporations to continue adding thereto. The fund is regarded as an invested asset, to be used for the payment of extraordinary losses, where they occur, or for some other purpose like the maintenance of dividends during periods of business adversity.

Self-insurance lends itself to a considerable variety of applications, but in all cases the primary purpose is to eliminate in part, especially through saving in commissions and other items of expense, the burden of premium payments to outside underwriters. Sometimes the plan includes all the risks of the owner, but this, as already stated, should be the case only where the separate items of property are sufficiently numerous and approximately evenly distributed in value. In other cases some vessels are insured under the self-insurance plan, and others, usually the more costly, with outside insurers. Sometimes one or more or all of the vessels are protected with outside insurance up to a certain amount, and the balance is assumed by the owner himself. Such a plan is frequently appreciated by underwriters because of the assumption that a substantial self-interest on the part of the owner is one of the surest inducements to the exercise of due care and diligence in the preservation of the property. Again, as already indicated, the self-insurance plan may be started in a small way and gradually increased from year to year, at the expense of outside insurance, until the self-insurance fund has been built up to an adequate amount. Sometimes, especially in the case of vessels of great value, the owner may first assume all loss up to a fixed amount, like $100,000 or $200,000, the outside underwriter's liability attaching only in case the loss should

exceed the stated amount, and then only for the excess. Such a plan is also appreciated by underwriters who, recognizing the limited character of their liability, will quote a very low rate on the excess insurance. In still other instances the outside underwriter's liability is limited to total or total plus certain special types of losses, the owner assuming all other partial losses, or only to losses which reach a certain stated amount, like $25,000, the owner himself assuming all losses smaller than that figure.

Process of Effecting Insurance.— Having outlined the several sources of insurance, a brief explanation might be given of the process followed in placing a policy. As already explained in Chapter I, the basis of a marine policy is the application,[4] or the proposal for insurance as it might be called. This must usually be filled out in duplicate on the underwriter's form, either directly by the owner or through his broker. This application is then presented to the underwriter for consideration of the facts contained therein. If, after consultation of his own records and the various books issued by classification societies, he is willing to assume the proposed risk he will either name a rate or stipulate the conditions under which he is willing to do so. Should the rate thus named, or the conditions demanded, prove acceptable the insured or his broker will sign the original application and hand it to the underwriter. He, in turn, will initial the duplicate application and hand it to the insured or his broker. A binding contract now exists, and it remains only for the underwriter duly to sign and deliver the formal policy.

It may, however, happen that the rate or conditions submitted by the underwriter are not accepted immediately, and that the insured or his broker may desire some time for consideration. In such instances the application forms are not signed, but a copy is retained by the underwriter, who is entitled at any time before actual acceptance to cancel his quotation. Moreover, the applicant has only a reasonable time within which to accept the quotation. The underwriter, however, is entitled to stipulate a definite time limit.

Work of Brokers.— A considerable portion of the nation's marine insurance is negotiated directly between insured and insurer through personal interview or by letter. By far the

[4] For a copy of the application form, *see* Appendix III, 212.

largest share of the business, however, and the proportion is constantly increasing, is placed indirectly through brokers who act as middlemen between client and underwriter. From a legal point of view the broker is the agent of the merchant or vessel owner whom he represents, but his compensation is received from the underwriter. Unlike the practice in other leading lines of insurance the so-called "agent" — legally the agent of the insurer — is comparatively rare in marine insurance.[5]

The technical character of the marine insurance business and the increasing size of the risks to be placed, often involving sums so large as to require the selection of from twenty-five to fifty different companies, make the use of brokers indispensable as far as the great majority of merchants and vessel owners is concerned. A brief description of the broker's service will make this clear. Having been advised by his client of the essential facts concerning the risk to be insured, such as the nature of the goods, the route, etc., he should be in a position to determine the form of contract (involving all endorsements) best adapted to meet the needs of his client. He should also attend to the proper filling out of the application, and should know the insurance market, i. e., the location and quality of the underwriters and the nature and cost of the protection they offer. If the needs of his client require an unusual contract, difficult to obtain, the broker should exert himself to the utmost to obtain the desired protection. Not only should he free his client from responsibility in the negotiation of the insurance, but in case of loss he should be able to take charge of all negotiations involved in the adjustment and payment of the claim. Here the broker can be very serviceable in preparing the documents of proof, in examining his client's statement of loss, and in making certain that the settlement offered by the underwriter is such as gives the insured the full amount he is entitled to under the terms of the contract. Where doubt exists as to the liability of the underwriter for certain losses, the broker should also take charge of the formulation of the facts and present his client's case.

[5] It should be stated that in recent years certain large brokerage concerns have seen fit to combine actual underwriting with their brokerage business. This they do by accepting appointments as special agents for certain companies.

The foregoing statement of services clearly indicates that the broker's position should be that of a disinterested middleman or a specialist in the principles and practices of marine insurance. Service is his one great function. There are few vocations where a reputation for honest and skillful service holds up a business more surely and results in its retention with greater certainty. The broker's constant aim should be not merely to write *a* policy but *the* policy, i. e., the policy best fitted to the needs of his client and issued by a company of unquestioned security and with an established record for fairness and honesty. His commission, although paid to him directly by the underwriter, is really paid by the insured, and should ever be regarded as compensation for real service, and not merely for placing a policy. This means that he should not only negotiate the best insurance, but through advice in relation to improvement of the risk, and knowledge of the insurance market, should strive to reduce the cost of his client's insurance to the minimum.

With reference to the underwriter, the broker's relation is such that he should be sufficiently conversant with sound marine insurance principles and practices not to demand conditions which are inconsistent with safe and just underwriting. He is also under moral obligation not to offer the business of a client whose financial solvency and business integrity are known by him to be questionable. But no legal liability rests upon the broker in this connection. Should the client fail to pay his premiums the broker cannot be held as a guarantor, unless he has expressly guaranteed the payment in order to induce the underwriter to accept his client's business.

REFERENCES

ARNOULD, JOSEPH: *The Law of Marine Insurance and Average.* (9th ed.). London, 1914.
Chap. IV: "Different Classes of Insurers on Sea Policies."
HUEBNER, S. S.: *Property Insurance.* New York, 1911.
Chap. XXIII: "The Organization and Purposes of Lloyd's."
MARTIN, FREDERICK: *History of Lloyd's and Marine Insurance in Great Britain.* London, 1876, Chap. XIX.
WINTER, W. D.: *Marine Insurance: Its Principles and Practice.*
Chap. XXI: "Brokers. Mutual Companies."
XXII: "Office Organization. The Annual Statement."

CHAPTER III

TYPES OF POLICIES

General Survey.— Marine insurance probably presents a larger variety of policies than any other class of insurance. An examination of the various types of contracts written in the United States shows that numerous titles are used to designate them according to the subject matter insured or the particular method of assuming the risk. While a comparison of the different types reveals that the phraseology varies considerably, a closer examination, whether with regard to vessel, cargo, or freight policies, will show that they all have been adapted to the particular risk from a common form, and that despite variations the basic portion of the contract is approximately the same. The only real difference exists in the adaptation of the contract to certain particular conditions, and not in the essential form or content of the document itself. To an increasing extent, also, special agreements in the form of clauses or endorsements are being standardized so that their application by numerous companies, as occasion requires, will be approximately the same, thus giving to the insuring public the advantage of the certainty that results from uniformity of phraseology and usage.

With reference to hull risks, some policy forms are general in their application, while others are limited to particular risks. Thus there are so-called "vessel policies," "vessel and freight policies," "sailing vessel policies," "steamboat policies only," "tug policies," "stranding or collision policies only," "lighterage policies," "yacht policies," "fishing policies," etc. Some policies are adapted to meet the needs of special trades, such as "Great Lakes or river traffic policies," "canal hull policies," "river cargo policies," and "lake cargo and vessel policies." Special forms are also issued to insure "port risks," i. e., cover vessels while in port, as distinguished from the assumption of risks connected with the actual conduct of a voyage; and "build-

ers' risk policies" which refer to vessels while undergoing construction or repairs. As regards cargo insurance there are "special" policies which cover individual risks; "open" contracts which protect all shipments within a given trade and coming under a certain description; "blanket" and "transit floater" contracts which are used widely in coastwise and inland marine commerce; and special contracts designed to cover certain types of products, such as grain, cotton, lumber, coal, livestock, or refrigerated commodities. Through the use of special clauses underwriters will also insure commissions, profits, and other special interests.

Unlike the practice in fire insurance (where a standard statutory policy is in general use), no standard form of marine insurance policy is required by law in this country. Each company uses its own form of contract, and while the differences between various companies in this respect are not great, yet they are sufficient to require thorough familiarity with the policy forms of different underwriters on the part of brokers and prospective applicants for insurance. This is particularly true where property is insured under many policies issued by different companies. Failure to examine the contracts is likely to lead to the existence of non-concurrent insurance, i. e., the several policies as regards their printed, written, or stamped portions may conflict with one another. The avoidance of such legal entanglements, which the courts are frequently unable to solve equitably, was one of the chief reasons which induced fire insurance companies to favor the adoption of a uniform standard contract. In Great Britain more has been done along this line than in the United States, and while no particular form of marine policy is required, that country has seen fit to codify its marine insurance law in the monumental Marine Insurance Act of 1906. This Act outlines in detail the rules which are to govern the writing of marine insurance in Great Britain. Following the presentation of these rules, the Act sets forth the Lloyd's form of policy[1] and presents in connection therewith the rules to be followed in construing its provisions.

As special circumstances may render one form of policy more

[1] For a copy of this form of policy, *see* Appendix IV, 214.

desirable than another, marine policies may conveniently be grouped into five classes, according to the nature of the risk assumed, or the basis upon which the policy is executed. Briefly stated, this fivefold classification depends, first, upon the manner in which the value of the subject matter of the insurance is expressed in the policy; second, upon the absence or presence in the policy of the name of the vessel which is to make the voyage; third, upon the period of time during which the risk is covered; fourth, upon the method of insuring cargo by covering all shipments in a given trade; and fifth, upon the interest of the policyholder in the subject matter insured.

"Valued" and "Unvalued" Policies.— A valued policy is one which stipulates some agreed value (not necessarily the real value) such as $10,000 of cotton, or a vessel worth $200,000. An unvalued policy (also frequently called an open policy) is, on the contrary, one which omits to specify the value of the subject insured, but leaves this to be ascertained when a loss occurs. The important difference between the two is that in case of total loss, in the absence of fraud, the valued policy entitles the insured to receive the value specified in the policy without proving the amount of loss, while the unvalued policy makes necessary an adjustment as proof of the loss incurred. In case of partial loss, however, this difference does not exist, since an adjustment must be made irrespective of whether the policy is valued or unvalued. Unvalued policies, it should be added, are not frequently used at present.

"Named" and "Floating" Policies.— This classification refers to the presence or absence in the policy of the name of the vessel for a particular voyage. By a floating policy is meant one which describes the limits of the voyage, the value of the property insured, and the type or class of vessel to be employed, but does not specify any particular vessel. The policy, in other words, states that it applies to any "ship or ships" or "steamer or steamers." The wording is thus made sufficiently broad to enable the merchant to insure his goods before ascertaining the name of the vessel on which they will be shipped, and to give him protection in case of loss before he is able to obtain specific insurance. As soon, however, as the name of the vessel employed on the voyage becomes known to the insured this information,

together with any important attending facts, is "declared" to the underwriter and endorsed on the policy, thus making it a "named" policy instead of a "floating" one.

"Voyage" and "Time" Policies.— The first type denotes insurance for a specific trip, as from New York to Liverpool, and the second refers to insurance for a period of time, usually for one year from noon of a given date to noon of the same date one year hence. Time policies are usually applied to hulls, but there are many exceptions. Their advantage consists in giving the insured permanent protection for a considerable period of time; and when the vessel is constantly employed in a regular trade will avoid the necessity of renewing the insurance for each successive voyage.

Open Cargo Policies.— These contracts (often referred to as "floating" policies or the "open policy cargo form") protect all shipments of the insured as described in the policy, if made within certain named geographical limits. At present, the great bulk of ocean cargo insurance — some authorities have estimated as high as ninety per cent — is written under this form. The term of the policy may be either for a definite or an indefinite period, usually the latter. During the life of the contract the insured is required to report, from time to time, all shipments coming under the description of the policy as they come to his notice, hence the use of the designation "open policy." It is highly important, however, that the insured should declare all shipments coming under the protection of the policy, and not merely those on which losses may have been incurred. Underwriters are entitled to collect premiums on the full amount of cargoes at risk, and failure to declare any shipments will to that extent deprive the underwriter of the proper premium to which he is entitled. Although the amount that will be protected and the premium to be paid are not determined in advance, there is, nevertheless, a general control exercised through the use of a valuation clause and the application of a limit of liability on any one steamer. While no termination date is mentioned in the contract, provision is usually made for cancellation by either party, subject to thirty days' notice. The premium will, of course, depend on the volume of shipments and is computed as per a rate schedule attached to the contract.

The serviceability of open policies to modern commerce must be apparent. Their advantage lies in the fact that each separate shipment need not be specifically insured in advance. In modern commerce it is very common for importers and others to be without knowledge as to the time of shipment or arrival of goods in which they are interested. A requirement, therefore, to have each shipment insured separately in advance would subject many to the risk of having exposed cargoes uninsured. Under open policies, however, all goods afloat are covered, quite irrespective of definite knowledge of the shipment by the insured, thus affording a type of protection which modern large scale commerce absolutely needs for its convenient conduct.

Blanket Policies.— Such contracts resemble open policies in their general purpose, but are radically different in their application. In fact, they may be described as "closed" instead of "open." The nature of the goods, the geographical and time limits, and the payee of the loss are set forth in the contract, as well as a definite limit of liability with reference to any one vessel at a given time. Compared with open policies the principal difference lies in the method of computing and paying the premium. Under open policies, as we have seen, the premium is based on the amounts of cargo actually covered, whereas under blanket policies the insured is charged a lump sum premium, based on the total amount of cargo which it is *estimated* will be protected during the term of the contract. If at the expiration of the policy the estimated total should prove to be in excess of the cargo actually carried, the underwriter agrees to return a portion of the premium, the amount so returned being computed according to the terms of the contract. Similarly, should the estimated total fall short of the actual shipments the insured is obligated to pay an additional premium at some agreed rate. Should a loss be paid, it is usually required that there be a reinstatement of the policy for the amount thus paid, together with the payment of an additional premium equal to a pro rata portion of the annual premium for the unexpired term. On the one hand, it will be noticed, that this requirement of reinstatement, with additional premium charges, may involve a considerable outlay on the part of the insured where he happens to suffer a number of losses. On the other hand, the blanket policy proves advantageous to underwriters in assuring

them premium payments for the full amount at risk. Open policies too often lead to the practice on the part of the insured of failing to report certain shipments coming under the policy. Fairness clearly requires that the underwriters should be compensated for all cargo that receives protection, and that the insured should therefore report all his shipments. It is also offered as an advantage of blanket policies to shippers that they do not require the same detailed statement of shipments necessitated under the terms of an open contract.

A special form of blanket policy is the so-called "transit floater." These are designed to protect local shipments, especially in coastwise and inland commerce, where it would be impossible for shippers constantly to report to underwriters all the numerous items of their shipments. Common carriers also frequently use such contracts to protect shipments intrusted to their custody.

Marine Insurance Certificates.— In the case of cargo shipments, marine insurance certificates have largely taken the place of the insurance policy itself as the document used in financing commercial transactions. As already explained, it is becoming the general practice for merchants to take out open contracts which will protect all their shipments over certain described routes. Under such policies the insured is usually given the privilege of issuing certificates from time to time on a special form provided by the company.[2] These certificates, when properly countersigned, serve as a convenient way of issuing successive negotiable evidences of the insurance itself. In fact, by this method the insured is enabled, as occasion requires, to draw against his insurance account in much the same manner that checks are drawn against a bank account. They make unnecessary the issuance of many copies of the policy, i. e., for each individual shipment, loan, or other purpose. Exporters, for example, are thus enabled to negotiate a lump sum total of insurance under one policy, and then, as occasion arises, to protect their consignees, bankers, or other creditors by issuing to them separate documents which evidence the original policy and which, by transferring to the holder the benefit of the insurance, act as a substitute therefor. One leading insurance company explains the usefulness of such certificates in the following words:

[2] For sample form, *see* Appendix VIII, 235.

Their use has been occasioned by the demands of bankers and merchants for some kind of negotiable insurance document which is immediately available and can be issued without any delay so as to permit forwarding along with other shipping papers, thus facilitating banking and other commercial purposes. They are usually issued in sets of three each, and are not valid unless countersigned by someone so authorized by the company. The original is sent forward with the other shipping documents, the duplicate retained as the office record of the assured, and the memorandum copy sent to the insurance company as an insurance declaration. The use of certificates of insurance also permits dispatch in the settlement of losses occurring abroad, since besides their function as certificates of insurance they show in addition the essential clauses of the contract, and our foreign settling agents are thus enabled to pay claims without referring to the terms of the original policy.

Described in detail, marine insurance certificates certify that on a given date the insured was protected by a named company "under policy no. ....." for a stipulated amount, on a designated cargo (including marks and numbers of the packages) shipped over a described route. According to its wording, "this certificate represents and takes the place of the policy, and conveys all the rights of the original policyholder (for the purpose of collecting any loss or claims) as fully as if the property were covered by a special policy direct to the holder of this certificate and free from any liability for unpaid premiums." Loss, if any, is declared to be "payable to ..... or order, at the office of ..... upon the surrender to them of this certificate, computed at the current rate of exchange on the day of payment, and when so paid liability under this insurance is discharged." Protection is granted against the perils specified in the original contract and the leading clauses contained in the policy are usually repeated in the certificate. It is expressly stated, however, that the certificate is "not valid unless countersigned by ....."

The important feature to note in the certificate is the statement that loss is "payable to ..... or order" at a named place, and at a fixed rate of exchange, if payable abroad. Quasi-negotiability is thus given to marine insurance certificates, thus making them readily accepted, where the responsibility of the underwriter is beyond doubt, in all the leading banking centers of the world. Holders of the certificates, however, take the same subject to the original insured's liability for unpaid

premiums, unless the underwriter has waived this condition by a special clause in the certificate. When the words "or order" are used, the payee may make the certificate a "bearer document" by merely signing his name on the reverse side, or he may transfer the payment of the loss to some particular party by endorsing the certificate "Pay to the order of ....." If made a "bearer" document, any holder of the certificate is entitled to receive payment, provided his interest is established by documentary evidence; but if endorsed "Pay to the order of ....." the loss is payable only to the named party or to someone whom he may have designated to receive the payment. To destroy the negotiability of the certificate it is only necessary for the endorser to eliminate the words "or order" or "to the order of." When this is done the certificate can be transferred only by actual assignment.

Attention should also be called to the provision for paying losses abroad. To facilitate such payments insurance companies carry deposits in the most important banking centers in foreign countries, which promptly become available to certificate holders after the loss has been adjusted by the insurer's foreign representatives. Much loss of time and other inconvenience to merchants is thus avoided, since it becomes unnecessary to forward the certificates and other papers connected with the adjustment to the home office, situated often in some distant country, as a condition preceding the payment of loss. It should also be stated that following the adjustment of the loss the payee under a certificate may instruct the underwriter by a written order to pay the loss to some third party, such as the banker who may have advanced funds on the shipment.

"Interest" and "Wager" Policies.— To complete our classification, reference should be made to what is called an "interest" policy, or one clearly indicating that the insured possesses a true and substantial interest in the subject matter of the insurance, such as a hundred bales of cotton or a thousand bushels of wheat. In contrast to this type of contract is the so-called "wager" policy, which, as its name implies, shows that the holder has no insurable interest capable of proof in the property covered; or that the underwriter, at least, will not demand proof. One of the cardinal principles of insurance law is that an

insurance policy, to be valid, must represent an insurable interest on the part of the insured. But while unenforceable in a court of law, such contracts are executed at times, usually in such form as to make them an obligation on the underwriter as a matter not of law but of "honor." Hence they are usually called "honor agreements." They will bear evidence on their face of a special agreement on the part of the underwriter that all proof of interest will be dispensed with. Usually such words as "Policy proof of interest" (the first letters furnishing the key to the so-called "P. P. I." policies), "Interest or no interest," "All interest admitted," "Without further proof of interest than the policy itself," or "Without benefit or salvage to the insurer," are used to signify that by common understanding the insured is entitled to the payment provided in the policy upon loss of or damage to the subject matter insured, irrespective of the fact that he has no strictly insurable interest in the same, or is incapable of proving his interest.

To avoid misunderstanding it is important to note that these contracts sometimes serve a real commercial convenience, especially where some interest exists which is either difficult or incapable of proof. Reference is had, for example, to insurance against the risk of duty-free articles being placed on the dutiable list, of existing duties being increased, or of burdens and other losses resulting from the possible declaration of war.[3] Such indefinite contingencies may make it difficult, if not impossible, to prove an insurable interest; yet it is clear that merchants may at times desire to free themselves from uncertainty in such matters. Very commonly, however, wager policies have been used for gambling purposes, and it was to suppress such practices under a penalty of fine or imprisonment that Great Britain in 1909 enacted a law entitled "Prohibiting gambling on loss by marine perils."

REFERENCES

Gow, William: *Marine Insurance: A Hand Book.*
Chap. XIV: "Insurance on Time — Time Policies."

Winter, W. D.: *Marine Insurance: Its Principles and Practice.*
Chap. VI: "The Policy. Assurer and Assured."

[3] Such policies are used also in connection with the insurance of "anticipated freight" as discussed in Chapter XII on Freight Insurance.

CHAPTER IV

ANALYSIS OF THE POLICY CONTRACT

The most essential features relating to the description of the insured, the nature and valuation of the subject matter insured, and the duration of the voyage are set forth in the opening words of the policy. For the purpose of our discussion the ordinary cargo policy will be used, essential differences in the hull policy being noted as occasion requires. No uniform wording has been adopted by all the companies in the introductory portion of the contract, yet as representative of the conditions usually provided the following form is given as typical of American cargo policies:

BY THE ..... INSURANCE COMPANY
(No. .....)

On Account of .....

In case of loss to be paid in funds current in the ..... United States, or in the City of New York to .....

Do make Insurance and cause ..... to be insured, lost or not lost, at and from ..... upon all kinds of lawful goods and merchandises, laden or to be laden on board the good ..... called the ..... whereof is master for this present voyage ..... or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called.

Beginning the adventure upon the said goods and merchandises, from and immediately following the loading thereof on board of the said vessel, at ..... as aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed at ..... as aforesaid. AND it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said goods and merchandises, hereby insured, are valued (premium included) at .....

"On Account of."— The first feature to attract attention in the above introductory paragraph of the policy is the expression "on account of." As already stated, all parties to the contract

must have an insurable interest, and the nature of that interest has been explained. But it is important to note that the insurance may be taken out by an agent and that the party named is not necessarily the real possessor of the interest. The party named, however, must possess a true interest indirectly, if not directly. As shown by recent investigations, numerous abuses have grown up in this respect, and recently the State of New York amended its law so as to make illegal the issuance of insurance to any party (likewise the application for insurance by said party) not possessed of a legal interest. Brokers, ship agents, and others are likewise prohibited from the practice of binding large amounts of insurance in advance, at lower rates, with a view to cornering the insurance market and thus placing themselves in a position where they can transfer this insurance to merchants at rates much in excess of those originally paid to the underwriter. To transfer insurance legally, the New York law requires that the buyer must be informed of the original rate so that he has full knowledge before consenting to pay an increased premium.

It is extremely important that the blank space following the words " on account of " be properly filled out. All parties interested in the subject matter of the insurance should be designated by name or be sufficiently described. Where the insured wants the protection for himself the matter is easily disposed of. But where other parties, as in the case of open policies, are interested, either as part owners or as consignees with instructions to insure, the situation is much more complicated and requires a statement of the several interests involved.

Very commonly American marine contracts use the expression " for account of whom it may concern." It has been suggested that the purpose of this phrase was orginally to keep maritime transactions secret by making it possible to negotiate marine insurance without revealing the names of the parties actually interested. But it is apparent that many abuses are likely to arise if a too literal interpretation of the expression is permitted. Whatever its original purpose may have been, it is now well established that the words imply agency, and that they contemplate only the parties for whom the insurance was intended and whom the agent had in mind when he negotiated the insurance.

Clearly these are the only parties really "concerned" in the insurance.

The adoption of the "Trading with the Enemy Act," upon the entrance of the United States in the recent war, also brought about a situation which made the use of the words "on account of whom it may concern" dangerous to underwriters as well as to the nation. Although quite innocent of wrongdoing, it might easily have happened that an underwriter would, under this expression, extend the benefits of insurance to an enemy of the country or to some party listed by the Government in its "proscribed list." To prevent such a contingency, and also to show their intention not to give aid inadvertently to the enemy, underwriters endorsed their policies with some such clause as the following:

> Warranted not to cover the interest of any partnership, corporation, association, or person, insurance for whose account would be contrary to the Trading with the Enemy acts, or other statutes or prohibitions of the United States or British Governments.

Payee of the Loss.—

In case of loss to be paid in funds current in the United States to .....

Analyzing the policy in the order of the wording used, we must next consider the above-mentioned payee clause. The method of transferring loss payments under insurance certificates, and of making payments in foreign countries, has already been discussed.[1] But it should be noted that the policy itself may be made payable to any third party interested in the subject matter, although usually it is made payable to the insured or order. In the case of mortgages on hulls the policy is declared to be payable to the mortgagee and the insured "as their respective interests may appear." Where shipments have been financed under credit instruments against which sums may be drawn from time to time by the insured, the loss is usually made payable to the bank issuing the paper in order to protect all its advances on the cargo. In all cases, however, claimants to a loss must prove the same, as well as their title thereto, through documentary evidence, or, as the saying is, through "proofs of loss." Should occasions arise where underwriters find it impossible to deter-

[1] *See* pp. 39–41.

mine the true interests "as it may appear" they are privileged, after paying the amount of the loss into court, to have the various claimants settle their disputes through legal channels.

Lost or Not Lost.—

Do make insurance and cause ..... to be insured, lost or not lost, at and from .....

The features to attract attention in the above extract are the two expressions "lost or not lost" and "at and from." Both were introduced very early in marine policies, and both serve a distinct purpose. The object of the first phrase originally was to provide for those cases where the safety of the vessel was feared, because of its having long been overdue and unheard from (a very common occurrence before the introduction of steam power, the telegraph, cable, and modern postal communications), and where insurance would therefore be especially desired. Such cases occur even to-day, and it also frequently happens that the owner of goods may have them exposed to the perils covered by a marine policy before he knows of their having been shipped, or before he has had opportunity to insure them.

The real object of the phrase is to have the policy cover a risk irrespective of the condition or position in which the ship or cargo may be at the time when the insurance is effected. To make the contract valid, however, both insured and underwriter must be in possession of the same facts. Without these words in the policy the aforementioned merchant would be unable to collect, on the ground of no insurable interest, if it could be shown that loss or damage already existed at the time of the issuance of the contract. Again, rumors of loss or damage may be in circulation and the insured may be particularly anxious to effect insurance. This can be done if the insured will warrant that the subject matter was in good condition on a given date, and if the underwriter is willing to assume the risk in view of the facts as presented. Even where it is known that the property has met with misfortune, although the seriousness of the disaster is unknown, the insured may wish to protect the remaining portion of the property. By inserting some such clause as "warranted free from loss, damage, injury, or expense arising out of casualty of (date of accident inserted)" the under-

writer may meet the insured's desire, thus protecting the balance of the venture against any subsequent accident, as distinguished from any further loss resulting from the original casualty.

"At and From."— Following these words there is a blank space reserved for a statement of the geographical or time limits of the contract. Validity of the contract depends upon some distinct reference to these limits. The time or place of the beginning of the contract must be definitely stated; while the time or place of termination, although they may be left indefinite, must also be defined in such manner as to show a clear understanding between the parties to the contract. Reference has already been made to the practice in open policies of allowing the term to run on continuously; yet there is a definite agreement about the matter to the effect that cancellation is permissible by either party, subject to a prescribed period of notice, like thirty days, without, however, prejudicing any risk pending at the time of cancellation. In time hull policies it is the practice to designate both geographical and time limits.

In explanation of the phrase it is also important to note that there is a decided difference between insuring a ship and cargo "from" a port and insuring it "at and from" that port. The first insurance would cover a vessel, for example, only from the moment that it departs on its voyage, while the "at and from" insurance would cover the vessel not only while on the voyage, but also at the port of departure before leaving. In case this is the home port the insurance takes effect as soon as placed, and protects the vessel during the period of preparation for the voyage. In case the port is one in which the vessel has not yet arrived, the insurance commences with the arrival of the vessel at that port, if in safe condition.

Description of the Subject Matter.—

Upon all kinds of lawful goods and merchandises.

Not only should the character of the cargo be specifically described, but in case a particular interest is insured, such as a half or a third interest, that fact should be definitely set forth. Where the policy is a specific one—insures a definite lot of goods—the marks and numbers should be used to describe the cargo. In open policies, on the contrary, such general terms as "cargo" or "merchandise" are customarily used, but this

is remedied by the specific description of the goods in the shipper's periodic declaration of shipments, required under the terms of the policy. Likewise in marine insurance certificates the use of marks and numbers is highly essential in order to have the subject matter covered by the certificate correspond to the goods described in the bill of lading to which the certificate applies.

By usage it is also necessary, owing to the special hazard involved, specifically to declare certain types of goods, otherwise the underwriter cannot be presumed to have contemplated their inclusion under the general description of "goods," "cargo," or "merchandise." Reference is had particularly to refrigerated goods and livestock, although the best opinion seems to hold that there should also be a specific declaration of specie, bullion, securities, and other articles of similar nature, and (where hull insurance is involved) of commissions, profits, or freight, if it is desired to insure these interests. The insertion of the word "lawful" serves the purpose of guarding the underwriter against the possibility of protecting any kind of illegal traffic.

Of special importance are the practices relating to coverage on "deck cargo." The decks of vessels are not intended for the carrying of merchandise, owing to the risks of water and weather damage, and of washing overboard. Nor have vessel owners the right to convey cargo in this manner except at their own risk or with the consent of the shipper. Underwriters cannot be presumed, in the absence of a definite agreement to the contrary, to extend their protection to cargo laden on the decks of vessels. Where the risk is definitely assumed, it is done by incorporating some special clause as:

> to cover all goods or merchandise under or on deck, shipped by ..... (hereinafter referred to as the assured) or by others, for their account, or in which they may have an interest, or for which they receive instructions to insure; said instructions to be made in writing prior to sailing of the vessel and prior to known or reported loss or damage.

By custom certain articles, like lumber, are transported on deck; while in other instances the law requires certain dangerous articles to be carried that way in order to enable their speedy destruction in case of necessity. In such instances under-

writers are supposed to be familiar with the usage or legal requirement and are precluded from denying a claim, although the policy contains no specific assumption of the risk. To free themselves from this contingency, policies sometimes provide that no cargo is covered while laden on deck.

Description of Vessel and Master.—

Laden or to be laden on board the good ..... called the ..... whereof is master for the present voyage ..... or whoever else shall go for master in the said vessel, or by whatever name or names the said vessel, or the master thereof, is or shall be named or called.

This wording requires little explanation. The matters referred to are vital, yet in practice the name of the master is usually not inserted in the blank space provided for the purpose. The adjective "good" is to be regarded as merely descriptive and not to have reference to the previously discussed implied warranty of seaworthiness.[2] But the naming of the vessel is absolutely essential. Manifestly the character of the vessel and its equipment for the particular cargo and voyage are fundamental to the underwriter in making up his mind as to the acceptance of the risk and the rate of premium to be charged. It is therefore important that a description of the particular type of vessel — whether sailing vessel, steamer, motor vessel, etc.— should be given.

The name and master of the vessel may be changed subsequent to the issuance of the policy, but the vessel itself must remain the same, or the contract, in the absence of an agreement to the contrary, will become null and void. Sometimes, as already explained, the policy may not specify any particular vessel, but may be stated to apply to any "ship or ships" or "steamer or steamers"; but under such circumstances the policy nevertheless describes the type or class of vessel to be employed. In case the vessel should become so disabled as to require the transfer of cargo to another vessel, such transshipment of cargo is covered under the contract. Where the master of the voyage has been named, deliberate misrepresentation will void the contract, but an unintentional error in this respect will not accomplish such a result unless the underwriter has been materially misled by the inaccuracy.

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[2] *See* p. 14.

Beginning and Ending of the Venture.—

Beginning the adventure upon the said goods and merchandises, from and immediately following the loading thereof on board the said vessel, at ..... as aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed at ..... as aforesaid.

This wording was designed with reference to cargo covered on a particular voyage. Floating policies, to quote their usual wording, "cover all shipments as herein described, made *on and after.*" The expression, however, is not inconsistent with the wording used in specific contracts. The floating contract has a definite date of commencement, but with reference to each particular shipment covered the protection attaches "immediately following the loading thereof on board of said vessel." "Following the loading" means "from the moment the slings of the vessel lift the goods clear of the wharf or other place of deposit,"[3] and in case of removal to the vessel from a lighter there is no loading until the slings have released the goods on the deck or in the hold of the vessel.[3]

By special agreement the underwriter may assume the risk either prior to the loading, or subsequently to the safe unloading, or both. The "Warehouse to Warehouse" clause[4] is probably the best illustration of this, since it covers commodities through all the stages of transit from the place of production to the place of consumption. At other times the policy may be so worded as to apply from the time the transportation company receives and receipts for the goods, thus protecting the shipment while it is on the dock. Such a "shore cover" may also be granted on the cargo following its landing at the port of discharge. Shore protection is very hazardous at times, especially when there is great congestion of freight. Underwriters are therefore often

[3] William D. Winter: *Marine Insurance*, 130-131.

[4] This clause assumes some such wording as the following: "It is understood and agreed that this insurance attaches from the time the goods leave factory, store or warehouse at initial point of shipment, and covers thereafter continuously, in due course of transportation, until same are delivered at store or warehouse at destination, except that on shipments to River Plate Ports the risk hereunder shall cease upon arrival of the goods at any shed (transit or otherwise), store, customhouse or warehouse, or upon the expiry of ten days subsequent to landing, whichever may first occur."

anxious to avoid an undue extension of the time, and usually provide that the insurance shall apply only for a limited period. It may be added that the sole function of marine insurance is to protect goods while in transit, and while out of the owner's custody. Moreover, should the insurance be effected before the insured possesses an insurable interest, there will be no attachment of the policy for the payment of a claim until the insurable interest has actually materialized, unless, of course, the contract is of the "P. P. I." variety.[5]

In the case of voyage policies the insurance either commences "from" or "at and from" a port and ends twenty-four hours after the arrival and safe mooring of the vessel at the port of destination. When the insurance is on time, the contract either attaches from the precise hour specified (such as "noon, Washington time"), or when no hour is mentioned from midnight of the preceding day. Should it happen that the insured vessel be at sea at the time of the expiration of the contract, provision is made in the policy for the automatic extension of the insurance until the vessel reaches her port of discharge.[6] But when an entire fleet of vessels is insured the contract usually attaches to all of the vessels at the same time, and since it is not to be expected that the fleet will at all times be wholly in port, or wholly at sea, it has become the general practice under such policies to ignore the location of the vessels involved.

The relation of the two terms "immediately following the loading thereof on board" and "until safely landed" to the subject of lighterage is of considerable importance. It is doubtful whether the lightering of goods from the shore to the vessel, even though customary or necessary at the port of departure, should be construed as included within the act of loading the goods on board the vessel. Such a construction would seem, although there have been instances of such interpretation, to be an unwarranted extension of the underwriter's risk. Good practice requires that this extra risk be assumed through a special

[5] *See* pp. 41, 42.

[6] This section of a hull policy reads: "Should the vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge, or of call, she shall, provided previous notice be given to the underwriters, be held covered at a *pro rata* monthly premium to her port of destination."

lighterage clause.[7] The British Marine Insurance Act deals with the problem, and the fourth paragraph of the Rules of Construction provides that "where goods or other movables are insured 'from the loading thereof' the risk does not attach until such goods or movables are actually on board and the insurer is not liable for them whilst in transit from the shore to the ship."

Referring next to the port of discharge, we are confronted with the question as to whether delivery of the cargo into lighters should be considered as meeting the term "until safely landed." Paragraph 5 of the Rules of Construction of the British Marine Insurance Act provides that "where the risk on goods or other movables continues until they are 'safely landed,' they must be landed in the *customary manner* and within a reasonable time, etc." Such customary manner may or may not be the only possible one, depending upon the character of the port. If lighters, or similar craft, constitute the only feasible method of safely landing the goods, the policy will continue to cover during the process of lighterage and until the goods are delivered on shore. But each case must be determined on its own merits, although very doubtful and difficult cases may present themselves.

Deviation.—

And it shall be and may be lawful for the said vessel, in her voyage to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance.

This clause outlines the circumstances under which the vessel is allowed to deviate from the customary route of travel without voiding the policy. Stress of weather and other unavoidable accidents are the only two permissible excuses specifically mentioned, but saving of life on the sea is also universally recognized as constituting a justifiable deviation. Mere saving of property, however, is not allowed, although hull policies usually contain a provision permitting the same. A little reflection will show that permission to deviate under the circumstances mentioned is distinctly beneficial to underwriters. Not to do so, and to declare the policy void because of justifiable deviation would

[7] Some such wording as the following is used: "Including risk of lighterage to and from the vessel, each craft or lighter to be considered as if separately insured."

often cause the masters of vessels to act contrary to their best judgment, and thus greatly increase the chances of loss or damage.

By naming the excusable causes, this section of the policy would seem to imply that all other instances of deviation are prohibited. In this respect, as already noted, the underwriter's interest is fully protected under one of the three important implied warranties underlying every marine insurance contract. This warranty implies that the voyage is started with reasonable promptness, that it will cover the customary direct route between the port of departure and the port of final destination, that only the customary ports of call will be touched at, that such ports will be called at in their geographical order, unless the usage is otherwise or their order has been definitely specified in the contract, and that reasonable speed will be exercised in unloading the vessel.

Violation of any of the foregoing factors will void the policy, and this irrespective of the fact that deviation may not be of much importance. Under these circumstances it would seem exceedingly harsh to subject cargo owners to acts of deviation on the part of the vessel, especially when they do not at all participate in its management. Accordingly some such "deviation clause" as the following is customarily allowed in cargo policies:

> This policy shall not be vitiated by any unintentional error in description of voyage or interest, or by deviation, provided the same be communicated to the insurers as soon as known to the assured, and an additional premium paid if required, but it is understood and agreed that this clause does not, in any way, cover the risk of war, riot or civil commotion, or prejudice the printed wording of the policy excluding risks of this nature.

Valuation of the Subject Matter Insured.—

> The said goods and merchandises hereby insured are valued (premium included) at .....

The overwhelming mass of marine insurance, probably all except one or two per cent, is written on the "valued" principle. This means that the insured and the underwriter agree in advance upon the value of the property insured and have a mutual understanding that neither will object to this value when it comes to the settlement of a claim, irrespective of the fact that the stated value will actually be below or above the true

value. Here marine insurance differs radically from other leading forms of property insurance. In fire insurance, for example, the policy is unvalued. It merely serves to indicate the maximum amount the underwriter can be called upon to pay, but any loss or damage, unless a different practice is required under a so-called "valued policy statute," is settled on the basis of mutual consent or by appraisement under the terms of an appraisal clause. The fire policy not only states that the company "shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs," but the underwriter is given the option of a settlement by appraisal or of replacing the property.

In marine insurance no such options are reserved to the underwriter. Instead, the valuation is definitely agreed on, and in the absence of fraud on the part of the insured, this agreed value is the basis for loss settlements. The practice, as will be indicated shortly, is well adapted to marine insurance, and has been in vogue for centuries.

Where a cargo policy refers to a single risk, such expressions as "valued (premium included) at $....." or "valued at sum insured" may be used to indicate the valuation. But when the policy covers all shipments in a certain trade the determination of the valuation may be settled in advance by agreeing that it shall be based on a fixed amount per unit of measure, or that the property shall be "valued at invoice cost plus ten per cent plus prepaid or guaranteed freight."[8] When the valuation contains a reference to more than one monetary unit, such as dollars and pounds sterling, there is usually an agreement in advance as to the rate of exchange which shall be used as a basis for translating one into the other. Vessels are valued in dollars, although in the case of expensive steamers there is a subdivision of the valuation such as (1) the hull, tackle, and furniture; (2) the machinery; and (3) especially expensive portions, such as cabin outfits, in the case of passenger vessels, and the refrigerating apparatus, in the case of refrigerated steamers.

Three main reasons make the valued principle fair and prac-

[8] Another commonly used clause is: "Valued premium included, at invoice cost, including all charges included in the invoice and including prepaid or advanced freight, if any, and ten per cent (10%) added, unless otherwise agreed upon at time of endorsement of risk."

ticable in marine insurance. In the first place, goods are shipped with the expectation of realizing a profit, and to that end the insured incurs many expenses, such as freight, insurance premiums, packing, handling, commissions, customs charges, etc. The value of the goods is thus subject to such constant change that it is generally impossible for the shipper to know in advance what the real value will be at the time of loss. It would therefore seem to be only fair, barring cases of fraud, to permit the parties to agree upon a fair value and to promise the insured that he may rely upon this value as the only one to be considered in the settlement of a claim. In fire insurance such a policy is clearly undesirable, because of the moral hazard. Here the insured has custody and control of the property, and is in a position, should he succeed in overvaluing his interest, to bring about its destruction. But in marine insurance the cargo is not in the custody or control of the insured, and he cannot destroy the same except through collusion with the carrier or other custodian.[9] Moreover, it is always desirable to reduce the prospects of litigation to a minimum. Needless to say, the valued principle helps to accomplish this purpose, and serves to eliminate needless friction and to create a stronger feeling of confidence in the mind of the insured. As the head of one leading marine insurance company recently wrote:

> The wisdom of this provision is indicated by the fact that in all my experience of twenty-five years in the marine business I have yet to see a suit between a marine underwriter and his assured about the valuation of goods or other insured property in case of loss, and I think this is solely due to the fact that before the adventure is undertaken, the value is agreed upon and that source of friction removed.

REFERENCES

See Chapter VI.

[9] This, however, is not the case in hull insurance, where the danger of fraud under valued policies, particularly during periods of dullness in the shipping business, is a real one. Yet even here underwriters can much more readily exercise their judgment as to values in one given line of property — namely vessels — than can fire underwriters, who insure every conceivable description of property.

CHAPTER V

ANALYSIS OF THE PERILS COVERED

Probably the most interesting portion of the marine insurance policy is the following section which enumerates the hazards against which protection is granted:

> Touching the adventures and perils which the said . . . Insurance Company is contented to bear, and takes upon itself in this voyage, they are of the seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, reprisals, takings at sea, arrests, restraint and detainments of all kings, princes, or people, of what nation, condition or quality soever, barratry of the master and mariners and all other perils, losses and misfortunes that have or shall come to the hurt, detriment or damage of the said goods and merchandises, or any part thereof.

The most noticeable features of the foregoing clause are the comprehensiveness of the enumeration, the apparently illogical arrangement, and the quaintness of the wording. Students of the subject are agreed that the wording gives unmistakable evidence of an evolutionary growth of the clause, new hazards having been added from time to time as commercial requirements dictated. Some of the terms used may also seem to be uncertain in their meaning, but it should be remembered that every word in the clause has had its proper meaning and its application to the rest of the contract determined by court decisions. It is for this reason that underwriters have been very reluctant to modernize the wording and thus run the risk of injecting uncertainty into a contract whose present meaning is so universally understood. The arrangement of the perils, it is true, may be faulty, but examination will show that they may be grouped into four main classes: (1) Those perils which have been appropriately called the "perils of nature," such as the "perils of the sea" and fire; (2) those enumerated perils which we associate with the conduct of those aboard the vessel, as jettison and barratry; (3) perils arising from the conduct of

those not aboard the vessel, such as enemies, pirates, men-of-war, etc.; and lastly (4) those perils referred to in the terminal clause, including "all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the vessel or cargo."

Perils Specifically Enumerated in the Policy.— Considered in the order of their enumeration in the contract, these perils are:

"*Perils of the Sea.*"— It should be noticed that this term expressly relates to perils "of" the sea and not perils "on" the sea. Consequently this term does not include all types of losses that may occur in the course of navigation. Instead, reference is had to losses resulting immediately from the abnormal action of natural forces upon navigable waters. The following list comprises the most important hazards falling under this head:

Excessive action of the winds and waves.
Effects of lightning as distinguished from fire.
Stranding.
Striking upon rocks and shoals.
Effects of unusual calm.
Collision due to ice, fog, darkness, or obstructions.
Collisions between vessels.[1]
Sinking.
Damage by salt water.
Damages through inevitable accidents, such as tidal waves and stress of weather.

Reference should also be made to the doctrine of "presumption of loss." Until recently it was the rule in the case of "missing" vessels — those lost without a trace to account for the cause — to presume that the loss occurred through some "peril of the sea." The application of this convenient rule, however, appears very unjust in war times, especially in the case of vessels lost in areas where the enemy was known to operate. Hence at present the assumption of loss through a sea peril may be rebutted by evidence tending to show that a war peril was the likely cause of the loss. If raiders, submarines, or mine fields were known to be in the area of the voyage this fact might be offered as the cause, especially if it is known that no

[1] This type of loss must be distinguished from the underwriter's liability for legal damages assessed against the guilty party and assumed in the contract under the so-called "collision clause." This clause will be discussed later in detail.

unfavorable weather conditions prevailed during the course of the voyage.

Fires.— This hazard is separately mentioned in the policy, since it is clearly a peril "on" the sea and not "of" the sea. It includes not merely actual destruction of the vessel or cargo by fire, but also all loss or damage resulting indirectly from fire, i. e., by heat, smoke, and odor, or by water, steam and chemical gases used to quench the fire. The fire hazard has always been a very serious one in connection with marine risks, and in recent years fire prevention has been emphasized along the same lines that have been pursued on land. In fact, modern steamers are very similar to large buildings with respect to fire prevention appliances. The use of steam injectors corresponds to the use of stand-pipes in buildings, while fireproof and water-tight bulkheads are similar to the use of fire walls in land structures. The widely used automatic sprinkler system in mercantile risks on land has also been duplicated by the same system on many steamers, but with the difference that the use of chemical gases is found much more efficacious than water.

Pirates and Rovers.— Although it is difficult to distinguish between these two terms it is clear that both refer to the acts of outlaws committing depredations on the high seas in violation of international law. It has been suggested that piracy may refer to the acts of those "who lie in wait for their victims," whereas rovers "sail the high seas seeking their prey." According to paragraph 8 of the Rules of Construction for the Marine Insurance Act of Great Britain the term "pirates" "includes passengers who mutiny and rioters who attack the ship from the shore."

Thieves.— This term refers to "robbery by force" as distinguished from "pilferage," or robbery by stevedores or others who through stealth obtain access to the premises. The latter risk is not considered by leading authorities to come properly within the scope of a marine insurance contract on the ground that it is considered bad policy to relieve the carrier from liability for such losses. Various state courts, however, have held the term "thieves" to include pilferage, and accordingly it is common for underwriters who desire to exclude this risk, to make the matter clear by inserting in the policy the words "assailing thieves." But competition has caused many under-

writers to acquiesce in the acceptance of liability for losses by pilferage; this usually being done by inserting a special stipulation to that effect. There is, however, a general agreement that the practice is unfortunate. Not only is pilferage a type of loss the payment for which should be an obligation upon the carrier, but it is extremely difficult to prove that the property was lost while in possession of the carrier. Pure negligence is the cause of much of the loss through pilferage; and carriers, knowing that shippers can secure insurance protection, have shown a much greater indisposition to settle claims. It may be added that by paragraph 9 of the Rules for Construction of the Marine Insurance Act of Great Britain "the term 'thieves' does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers."

Jettison.— This peril consists of "the throwing overboard of a part of the cargo or any article on board the ship, or the cutting and casting away of masts, spars, rigging, sails, or other furniture for the purpose of lightening or relieving the ship in case of emergency."[2] This term does not cover those cases where goods are jettisoned because of natural deterioration or inherent defects. Nor does it cover jettison of property due to the negligence or default of the owner; nor of deck cargo, except where expressly permitted by usage or by the terms of the contract. However, loss by water damage, if connected necessarily with the act of jettison, is allowed. "Washing overboard," however, is not a voluntary act such as is contemplated under the term jettison, and should be considered as a peril of the sea. At present, loss by jettison is preëminently identified with "general average," a subject to be considered in a later chapter.

Perils of War.— About half of the hazards enumerated in the policy come under this head. They may be defined as follows:

(1) *"Men-of-War."*— At present this term refers to any kind of apparatus used by belligerent governments in the aggressive prosecution of naval warfare. The word not only relates to battleships, cruisers, and other fighting craft — the original meaning — but also submarines, aëroplanes, torpedoes, stationary or floating mines, depth bombs, and any of the other modern devices for carrying on naval warfare.

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[2] Willard Phillips: *A Treatise on the Law of Insurance*, i. 635.

(2) *"Enemies."*— This term will certainly include any devices which might possibly be construed as not coming within the meaning of "men-of-war." Probably the word was also included in the policy to give protection against the acts of privateers and others authorized to conduct warfare under a belligerent flag, without, however, belonging to the country of that flag.

(3) *"Letters of Mart and Countermart."*— This phrase relates to letters granted by belligerent governments to their citizens, authorizing them to retaliate on the enemy in order to recompense themselves for losses suffered through enemy acts. Since such privateers operate under a national flag they cannot be regarded as pirates. Since 1856, however, the practice of granting such letters was abolished by the Treaty of Paris, and although the peril is still retained in the policy its importance has become relatively slight.

(4) *"Reprisals."*— Most writers assert that this term cannot be distinguished from letters of mart and countermart. Lloyd's policy, it should be noted, uses the word "surprisals" instead. Winter remarks that "the word has been in common use in the recent war with reference to acts of retaliation against crimes committed by one of the belligerents in violation of international law,"[3] but merely raises the conjecture that the term might have been inserted in the policy to convey some such meaning.

(5) *"Takings at Sea."*— This expression has reference to the capture of vessel and cargo with a view to retaining possession. In most recent wars, and especially the last one, this hazard was probably the most important one (with the possible exception of sinking by submarines) among all the war perils.

(6) *"Arrests."*— The term closely resembles the meaning conveyed by "takings at sea." Yet the expression would seem to refer to capture with a view to having an examination of the property before freeing or condemning the same.

(7) *"Restraints and Detainments of All Kings, Princes, or People of What Nation, Condition, or Quality Soever."*— "Restraint" has reference to any restriction, such as an embargo, which prevents vessels from using the ports of the country imposing the measure, thus causing loss through inter-

[3] William D. Winter: *Marine Insurance: Its Principles and Practice*, 151.

ruption in regular trade, and possibly the sacrifice of cargo. "Detainment," on the other hand, refers to the act of detaining a vessel and cargo by blockade, quarantine, or other governmental regulation. The term, however, does not cover losses caused by any ordinary delay such as results from defective machinery, changing market conditions, etc. Nor must the restraint or detainment be the result of mere individual acts. The qualifying phrase, "of all kings, princes or people, etc.," is intended to make this clear. The acts contemplated are those of governmental groups, although the government in question may not be duly constituted or recognized by other nations. Paragraph 10 of the Rules for Construction of the British Marine Insurance Act seeks to clarify the situation by stating that the term "arrests, etc., of kings, princes, and people refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process."

Barratry.— This term comprises the losses resulting from mariners. It comprehends not only "every species of fraud and knavery covinously committed by master or mariners with the intention of benefiting themselves at the expense of their owners, but every willful act on their part of known illegality, gross malversation, or criminal negligence by whatever motive induced, whereby the owners or the charterers of the ship are, in fact, damnified."[4] As coming under barratrous acts may be mentioned the scuttling of a ship, willfully destroying or injuring a vessel, willful misconduct and breach of duty on the part of master or mariners by running it ashore, setting it on fire, or abandoning it, sailing a vessel or diverting it from the true course of travel with the object of obtaining gain in some way, and embezzlement of cargo. To quote Winter, "Willful violations of law, such as the violation of a blockade or an embargo, or trading with the enemy, even though done for the purpose of benefiting the owners, are barratrous acts. The willful action of the master or the mariners in putting the vessel in a position of peril by disobeying the instructions of an authorized pilot, or cutting a cable so that the vessel would run ashore, or proceeding on a voyage when capture by the enemy was certain, and other like

[4] Joseph Arnould: *The Law of Marine Insurance*, ii. 952, § 839.

cases have been held to be barratrous acts."[5] It may be added that paragraph 11 of the Rules for Construction of the British Marine Insurance Act defines barratry to include "every wrongful act willfully committed by the master or crew to the prejudice of the owner or, as the case may be, the charterer."

All Other Perils, Losses, and Misfortunes.— To make sure that the foregoing list of expressed perils, formidable though it may seem, shall not work any hardship because of the inadvertent omission of some marine hazard, the "perils clause" closes with the remarkable words, "all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandise, or any part thereof." Apparently this phraseology, commonly called the terminal expression, might seem, if taken literally, to make the underwriter liable for losses arising from all causes not specifically mentioned in the policy. This, however, is not at all the case. The real intent of the clause is still to limit the liability of the underwriter to losses resulting from causes similar to those previously enumerated, i. e., to those losses which are due only to accidental causes connected with the sea, and which result from the action of the elements, or from other overpowering and unavoidable occurrences, and not from any inherent defect of the subject insured, or from natural causes, such as deterioration, wear and tear, etc., in so far as they are inevitably associated with the general prosecution of the journey. To quote the British Marine Insurance Act, the term "includes only perils similar in kind to the perils specifically mentioned in the policy." Thus, for example, certain types of explosions (those that are not affected solely by impact or percussion) have been held to be sufficiently like the effect of fire upon a vessel. Bursting of boilers and latent defects in machinery, however, are not to be regarded as coming within the range of this clause. Losses from these causes are assumed by underwriters, but the liability is incurred through the endorsement of a special clause (the Inchmaree Clause) which provides that:

> This insurance policy is also specially to cover (subject to the free of average warranty) loss of, or damage to hull or machinery,

[5] William D. Winter: *Marine Insurance: Its Principles and Practice*, 147.

through the negligence of master, charterers, mariners, engineers, or pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the owners of the ship, or any of them, or by the managers. Masters, mates, engineers, and pilots or crew not to be considered as part owners within the meaning of this clause should they hold shares in the steamer.

General Types of Losses for Which the Underwriter is Liable.— In applying the aforementioned perils to particular circumstances the courts have held that underwriters are liable for losses attributable to errors of judgment on the part of the master of the vessel, provided such errors do not amount to culpability. Events which in the absence of any fault of the insured increase the risk, come within the scope of the policy, such as inevitable delay in starting and prosecuting the voyage. Underwriters likewise are not relieved from liability for the occurrence of unforeseen events (such as the sudden outbreak of a war) following the issuance of the contract. The premium, in the illustration used, might have been based on peace conditions, yet the subsequently arising hazard must be assumed without increase in the premium in the absence of any agreement to the contrary.

Types of Losses for Which Underwriter is Not Liable.— These refer to losses which are inevitable and not fortuitous, or which are the result of gross negligence or fraud. Among the most common should be mentioned customary wear and tear caused by the ordinary forces of nature, and all losses through deterioration in quality and diminution in quantity as a result of the inherent qualities of the subject matter itself, such as natural decay, leakage, or evaporation in the course of time. No liability exists for fire damage due to the improper preparation of cargo by the insured, but this exemption does not extend to losses caused by said fire to cargo on the same vessel owned by other parties. Nor is the underwriter liable for loss or damage, although due to one of the enumerated perils, if caused directly by fraud or misconduct, if equivalent to willful misconduct or gross negligence.

Special Clauses Modifying the Protection Offered.— In probably no form of insurance do underwriters use so many special agreements (clauses or endorsements) which have for

their purpose either restriction or enlargement of the protection promised under the policy. Some of these, like the Inchmaree Clause, have already been referred to, and others will be mentioned in later chapters. Suffice it to call attention at this time to two important clauses. The first relates to the war hazard, and is commonly called the "war clause," or "free of capture clause."[6] The risk of war proves, at times, the most hazardous of all risks, and cannot be assumed except at a very large additional premium. The clause is therefore designed to give the underwriter, should war be declared subsequent to the issuance of the contract, an opportunity to demand an additional premium to meet the great increase in the risk. It would manifestly be unfair to expect the war hazard to be assumed at rates which prevail in times of peace. Originally this important clause was stamped on the policy, but in more recent years it has been embodied in the main printed portion of the contract. Where the risk of war is assumed it is usually customary to insert further clauses in the contract whereby the insured warrants "not to abandon in case of capture, seizure, or detention until after the condemnation of the property insured nor until ninety days after notice of said condemnation is given to the company"; also "not to abandon in case of blockade," and to relieve the underwriter "from any expense in consequence of detention or blockade, but in the event of blockade to proceed to an open port and there end the voyage."

The second clause referred to is usually called the "strikers' and locked-out workmen clause" and provides that cargo policies are "warranted free of loss or damage caused by strikers, locked-out workmen, or persons taking part in labor disturbances, or riots, or civil commotions." This clause is necessary since insurance on cargo generally applies "from warehouse to ware-

[6] This clause usually assumes some such form as:

"It is also agreed that the subject matter of this insurance be warranted by the assured free from loss or damage arising from riot, civil commotion, capture, seizure, or detention, or from any attempt thereat, or the consequences thereof, or the direct or remote consequences of any hostilities arising from the acts of any government, people, or persons whatsoever (ordinary policy excepted) whether on account of any illicit or prohibited trade, or any trade in articles contraband of war, or the violation of any port regulation, or otherwise. Also free from loss or damage resulting from measures or operations incident to war, whether before or after the declaration thereof."

house," or protects the goods "on shore" either prior to shipment or subsequent to discharge. Hence in the absence of such a clause there is a likelihood of liability for loss caused through strikes, riots, or civil commotions. For an extra consideration, however, underwriters will waive this clause and substitute therefor a clause[7] which expressly covers losses of this kind.

"Doctrine of Proximate Cause" or "Predominating Peril."— Before underwriters become liable the loss must be *proximately* caused by one of the perils covered by the policy. This means that the direct and immediate, instead of the remote, cause must be ascertained. As stated in the case of Pink v. Fleming,[8] "The question, which is the *causa proxima* of a loss, can arise only where there has been a succession of causes. When a loss has been brought about by two causes you must, in marine insurance law, look only to the nearest cause, although the result would no doubt not have happened without the remote cause." Phillips defines the doctrine as follows: "In case of the concurrence of different causes, to one of which it is necessary to attribute the loss, it is to be attributed to the efficient predominating peril, whether it is or is not in activity at the consummation of the disaster."[9]

The recent war has probably more than any other equal period of time furnished many complicated instances of two or more perils appearing in connection with the same loss, thus often making it necessary to ascertain the efficient cause in order to determine which of two underwriters should pay the claim, viz., the underwriter who may have accepted the war hazard only, or the one who may have accepted only the peace risk. Thus let us assume that a vessel was torpedoed, although insured only against ordinary marine risks. The injury, however, was

[7] This clause, using the wording recommended by the American Institute, reads as follows:

"In consideration of an additional premium of —— per cent (such premium being subject to revision from day to day), it is agreed that this policy shall also cover destruction of the property insured or damage done to it by strikers, locked-out workmen, or persons taking part in labor disturbances, or riots, or civil commotions, but warranted free of claim for loss, damage, or expense arising from deterioration, loss of market or delay, or from extra handling or storage."

[8] For the facts of this case *see* Frederick Templeman's *Marine Insurance*, Ch. III, "Causa Proxima," 53.

[9] Willard Phillips: *Treatise on the Law of Insurance*, § 1132.

such as to give the vessel a reasonable chance to reach port, since the effects of the torpedoing were limited to the vessel's listing somewhat and of being partially out of control. Subsequently, owing to these conditions, the vessel misses the proper channel and becomes a total loss through stranding. In reviewing such a set of circumstances, Winter concludes: "The immediate cause of the total destruction of the vessel would undoubtedly be the stranding, a marine peril, but the proximate cause would be the torpedoing, a war peril, and the loss should not fall on the marine underwriter."[10]

REFERENCES

See Chapter VI.

[10] William D. Winter: *Marine Insurance: Its Principles and Practice,* 142.

CHAPTER VI

FURTHER ANALYSIS OF THE POLICY

Immediately after the enumeration of the perils there follow a number of leading clauses which are almost universally found in marine insurance policies, and which comprise about three-fourths of the entire contract. These clauses may again be discussed advantageously in the order of their appearance in the policy.

"Sue and Labor Clause."—

And in case of any loss or misfortune it shall be lawful and necessary to and for the assured, ... factors, servants, and assigns to sue, labor, and travel for, in and about the defense, safeguard and recovery of the said goods and merchandises, or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; to the charges whereof, the said Insurance Company will contribute, according to the rate and quantity of the sum herein insured .....

Good faith requires that the owner of insured property, or his representatives, shall do all in their power to prevent loss or damage from reaching unnecessary proportions. The purposes of this clause, which it will be noticed applies only after a loss or misfortune has occurred, are (1) to call the attention of the insured to his duty in the matter, and (2) to offer proper inducements to get him to act. Originally this clause was of the utmost importance, since voyages were long and hazardous and the means of communication slow and uncertain. Reliance upon the owner of a vessel, or his representatives, for the preservation of the insured property was therefore absolutely necessary. Modern means of rapid communication, however, like the cable and wireless telegraph, have changed this to a very large extent. Through these means underwriters are enabled in the great majority of instances to initiate and supervise salvage operations. Yet the clause remains highly important in all cases where the

loss is due to the fault of third parties. Under such circumstances the clause requires the insured to undertake himself the enforcement of all remedies at law.

Any efforts of the insured in carrying out the provisions of the clause will, if successful, redound to the benefit of the underwriter; and it is only fair that he, in turn, should promise (1) to bear all expense honestly and prudently incurred by the insured, and (2) that the insured may proceed with his efforts without fear that any of his acts might serve as an excuse for the resistance of a claim. The "waiver" portion of the clause was of later origin than the other parts, and was probably inserted to set forth in writing the underwriter's right to participate directly in the efforts to save the property. Should there be under-insurance, it is only fair to expect the insured to be interested in saving his uninsured interest. For this reason the clause promises payment of all expenses incurred in suing, laboring, and traveling in the interest of the property only if it is fully insured. When only partly insured, the expenses are paid only in the proportion that the insurance carried bears to the value of the property at stake.

The Consideration.—

Having been paid the consideration for this insurance by the assured or ..... assigns, at and after the rate of .....

As previously explained,[1] there must be a valid consideration in order to have a valid policy. Technically interpreted, the wording used in the policy might be considered as an admission that the premium has been paid. But this is not the correct view; instead, the clause should be regarded as a condition precedent to the carrying of his obligation by the underwriter. Customarily the premium is stated in the margin of the policy, and represents a percentage of the amount of insurance. In this country the unit of insurance is $100 and in Great Britain £100. Accordingly, a rate of one per cent in the United States gives a premium of $1.00 per $100 of insurance; while in England this rate would be expressed as one pound per cent, which would mean that the cost of insurance is £1 per £100. Frequently rates in Great Britain are expressed in shillings and pence. An American rate of one-twentieth per cent would be

[1] *See* p. 11.

indicated in England as one shilling per cent (twenty shillings constituting a pound sterling).

Unlike the practice in fire insurance, there is no refund of the premium in marine insurance after the policy has once begun to apply. In fire insurance, to quote the standard policy: "If this policy shall be canceled, as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice, it shall retain only the *pro rata* premium." No such provision for cancellation is found in marine insurance, and according to court decisions, no return premium is allowed unless the policy has been so written as definitely to divide the risk into parts, and to apply to each part a definite portion of the premium, or unless it contains a clause specifically promising such a return of the premium. In fact, the policy even provides in another section that "if the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage."

The practice just referred to is based upon the theory that the marine premium relates to the entire term of the contract, and that it cannot, as in the case of fire insurance, be equitably apportioned day by day and month by month. Assuming an annual hull policy, which covers different seasons of the year, it stands to reason that it would be unfair to consider the hazard the same at one time as another. The risk during the first two months, even assuming that it were possible to measure the hazard in that manner, might be as important as all the remaining ten months combined. But such a process of measurement is impossible; in fact, the courts have refused to make any apportionment at all. To permit cancellation in the above instance and require a return of ten-twelfths of the premium would take into account only the element of time and might prove a gross injustice to the underwriter if one considers the more important element of hazard. The policy being thus accepted as an indivisible proposition, it follows that the premium paid therefor is likewise indivisible.

Settlement of a Loss.—

And in case of loss, such loss to be paid in thirty days after proof of loss, and proof of interest in the said.....(the amount of the note given for the premium, if unpaid, being first deducted), but no partial loss or particular average shall in any case be paid, unless amounting to five per cent.

Before the loss is paid the insured is required to fulfill two conditions, namely, present (1) his proof of loss, and (2) his proof of interest. The first consists of the "protest," which is a sworn statement made by the master and a part of the crew (usually made before a notary public if at a domestic port, or before a consul if at a foreign port) in which they explain the circumstances and perils under which the loss occurred. A survey, made by a sworn surveyor of the port, or some other disinterested expert, or an examination of the log of the vessel, may also accompany the protest. "Proof of interest" consists of the documents necessary to prove the nature and extent of the insurable interest. In hull insurance it consists of the register of the vessel recorded in the Customs House, while in cargo insurance it comprises the invoice (showing the value) and bill of lading (showing that the goods were on the vessel) and an affidavit of the insured in which he declares that he actually possesses the interest claimed in the subject matter of the insurance. The policy or the certificate of insurance, as the case may be, is also presented.

In foreign countries underwriters usually have representatives at the leading ports, who are available for loss settlement purposes and who thus greatly simplify the adjustment of losses on cargoes shipped to distant markets. In any case, however, the final "statement of loss" or "adjustment" is usually prepared by an expert. It sets forth in detail the nature of the various items of loss, the cause of the loss, and the extent of liability under the policy. Following the presentation of these various documents of proof, the loss must be paid within the designated thirty-day limit, this limit being presumed to constitute ample time within which the underwriter may make such investigations as he deems necessary. But as a matter of fact the payment is usually made much sooner, frequently within a few days.

The last few words of the clause, providing that partial loss must amount to at least five per cent in order to be paid, deserves

a few words of explanation. The percentage used is commonly called the "franchise." If nothing is said to the contrary in the policy, the underwriter pays the entire loss if it equals or exceeds the percentage mentioned. But frequently a "deductible average clause" is inserted in the contract, in which case the underwriter's liability is limited in all cases only to the excess of any loss over and above the franchise. Through the introduction of the franchise limitation the underwriter eliminates his liability for numerous small losses, many of which are almost certain to happen owing to the nature of the traffic, and also frees himself from the annoyance and expense of adjusting a mass of comparatively inconsequential losses. As a result the cost of insurance is considerably decreased, and the public is benefited by not being obliged to assume the expense involved in numerous needless adjustments.

Double Insurance Clause.—

Provided always, and it is hereby further agreed, that if the said assured shall have made any other insurance upon the property aforesaid prior in day of date to this Policy, then the said Insurance Company shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property hereby insured. And the said Insurance Company shall return the premium upon so much of the sum by them insured as they shall be by such prior insurance exonerated from. And in case of any insurance upon the said property subsequent in day of date to this policy, the said Insurance Company shall nevertheless be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent insurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent insurance had been made. Other insurance upon the property aforesaid of date the same day as this policy, shall be deemed simultaneous therewith; and the said Insurance Company shall not be liable for more than a ratable contribution in the proportion of the sum by them insured to the aggregate of such simultaneous insurance.

This clause is peculiar to American marine policies and presents a method of settlement radically different from that followed in fire insurance or in British marine insurance. It simply serves to state the respective liabilities of two or more underwriters who may have insured the same subject matter. The basis for the determination of the liability is the order of the day of date of the contract involved. If the policy in question has been written subsequently in day of date to another policy,

the latter (or prior policy) will assume all of the liability until it is exhausted. The policy in question (the subsequent policy) will therefore only assume the balance of loss which the prior policy, owing to the fact that it was deficient in amount, could not pay. *Vice versa,* if the policy in question happens to be prior in the day of date to another policy, it is agreed that it shall alone assume liability for loss until it is exhausted, the subsequent policy not sharing in the loss until that time. Should there be three or more policies, all different in day of date, each policy would have to be exhausted in the order of its date before the next subsequent policy would become liable. But where two or more policies are simultaneous in day of date, and the combined insurance carried under all the policies exceeds the loss incurred, then each policy will contribute to the loss in the proportion that its insurance bears to all the insurance involved. Moreover, where the policy in question is freed from the payment of a claim, because a prior policy assumes the loss, the underwriter agrees to return the premium on the amount which represents the over-insurance. But the entire premium may be retained when the policy in question is the prior one; and where several simultaneous policies contribute to a loss, each underwriter may retain his *pro rata* portion of the premium.

In fire insurance a totally different method is followed, and all insurance contributes to any loss, irrespective of whether it is prior, simultaneous, or subsequent. In Great Britain, likewise, the order of the day of date of the policy is of no consequence in marine insurance, but the plan used differs from either of the above methods. There each policy assumes liability for its full amount, but the insured is privileged to select the underwriter from whom he wishes to collect. This underwriter then possesses the right to make the other underwriters contribute their ratable share of the loss.[2]

It may happen that the property is under-insured, or that in case of a valued policy the insurance taken is less than the

[2] The Marine Insurance Act, § 80, sets forth the English practice as follows: "(1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute ratably to the loss in proportion to the amount for which he is liable under his contract. (2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt."

policy valuation. Under such circumstances the method followed is the same in both the United States and Great Britain, and also corresponds to the usage in fire insurance. The practice is to make the insured his own insurer (a co-insurer) in respect to the uninsured balance. The underwriter, in other words, will share a loss only in the proportion that the insurance bears to the value of the property, or to put it another way, in the proportion that the insurance taken bears to the entire insurance (the underwriter's subscription plus the insured's self-insurance for the balance).

Under still other circumstances it may happen that the property is insured under several policies, the coverage of which, however, is different. Thus one policy may cover only the war hazard, another only a total loss, and still another only partial losses. These three policies must be considered as covering different risks, and although applying to the same subject matter must not be confused with insurance under two or more policies which are alike in the terms of their coverage. Since the policies relate to different risks, each must assume its own responsibility for losses arising from the particular hazards to which it refers.

Capture, Seizure, Detention, Blockade, or Prohibited Trade.—

It is also agreed that the property be warranted by the assured free from any charge, damage or loss which may arise in consequence of a seizure or detention for or on account of any illicit or prohibited trade, or any trade in articles contraband of war.

Warranted not to abandon in case of capture, seizure, or detention until after condemnation of the property insured, nor until ninety days after notice of said condemnation is given to this company. Also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention or blockade, but in the event of blockade to be at liberty to proceed to an open port and there end the voyage.

This clause, or rather series of clauses, refers to certain kinds of losses which underwriters are very unwilling to assume. Analyzed in detail, four distinct matters are covered by the wording used. The first paragraph, it should be noted, does not cover seizure or detention in general, but only losses arising therefrom, when occasioned ("for or on account of") by illicit or prohibited trade, or trade in contraband of war. Manifestly, this clause does not apply to shippers who may innocently have

goods on the same vessel which contains other cargo responsible for the seizure or detention. Contraband of war is the only illegal trade specifically mentioned, but the general wording of the policy also covers all illicit trade in times of peace, such as trade which violates domestic law, ordinances, and port regulations, or which is contrary to the laws and regulations of foreign nations, if the same are recognized by treaty.

The next paragraph prohibits abandonment[3] in case of capture, seizure, or detention. This term may be defined as the practice whereby the insured transfers all his rights in the insured property to the underwriter (subject, however, to all existing encumbrances of the insured, as well as all claims by the insured against third parties) following the occurrence of any casualty covered by the policy and demands payment therefor on the basis of a total loss. Under the wording of the clause the insured is prevented, in case of capture, seizure, or detention from refusing to use his best efforts to get the property released. Were there no such clause the insured could simply regard the insured property as a total loss and "abandon" it to the underwriter, and demand full payment of the insurance. Should the vessel be actually condemned, the underwriter agrees to permit the insured to exercise the right of abandonment. But even under this circumstance the abandonment must be postponed for a period of ninety days, thus giving ample time to appeal the case with a view to exerting further efforts to bring about a reversal of the original judgment. In the case of blockade, however, there is to be no abandonment at any time.

The last sentence contains two additional thoughts, namely, (1) that the underwriter is free from any expense in consequence of capture, seizure, detention, or blockade, and (2) that in the event of blockade the insured is at liberty to proceed to an open port and there end the voyage. Both of these provisions are fair. Strictly speaking, the insured property is lost only when it has been condemned. Until that time the risk is that of the insured, and he incurs all expenses associated with the effort to release the property. But the indirect interest of the underwriter is nevertheless so great that he will want the property saved, and to this end, although not assuming any of the expense,

[3] Abandonment will be discussed in detail in the chapter relating to total losses.

he is usually willing to assist the insured by freely giving his aid and advice concerning the proper method of legal procedure. Moreover, it is only fair that the underwriter should be willing, in case of blockade, to permit the insured to deviate from the usual course and end the voyage at an open port. Manifestly, the underwriter will be benefited by allowing the insured to extricate himself from the blockade, and it would be the height of folly to insist upon the enforcement of the principles in the "doctrine of no deviation."

The "Attestation Clause."— To formally bind the contract it is necessary that the policy be signed by the duly authorized officers of the company issuing the contract. The actual signatures are preceded by the so-called "Attestation Clause." This clause requires no explanation, and usually assumes some such form as:

> In Witness whereof, the President or Vice-President of the said Insurance Co. hath hereunto subscribed his name and the sum insured, and caused the same to be attested by their Secretary, in ..... the ..... day of ..... one thousand nine hundred and .....

Subrogation Clauses.— Space limits make impossible an explanation of all the additional clauses which find their way into marine policies in order to meet special conditions. Two clauses — the "Memorandum" and the warranty excluding damage from dampness, change of flavor, etc.— are invariably found in cargo policies, but their discussion is reserved for a later chapter.[4] Another clause — the "Collision Clause"— is found in every hull policy, but its discussion may again be postponed for the chapter on hull insurance. The three subrogation clauses,[5] however, may be advantageously considered at this point, since their use is very common, although not universal.

One of these clauses is of recent adoption, and is designed to prevent carriers from shirking their liability for negligence by

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[4] *See* pp. 102–105.

[5] These three clauses are worded usually as follows:

(1) "Warranted by the assured that this insurance shall not enure directly or indirectly to the benefit of the carrier or other bailee, by stipulation in bill of lading or otherwise, and any breach of this warranty, and any act or agreement by the assured, prior or subsequent hereto, whereby any carrier or party liable for or on account of loss of or damage to any property insured hereunder, is given the benefit of any insurance effected thereon, shall render this policy of insurance null and void."

placing a provision in their bills of lading to the effect that the shipper's insurance on cargo shall enure to the benefit of the carrier. Formerly it was the practice of underwriters to pay a loss, due to the negligence of the carrier, to the insured and then seek reimbursement by suing the carrier in the name of the insured. Such action of the underwriters was met by the carriers through the aforementioned plan of confiscating the insurance. This situation, in turn, led to the introduction of a policy stipulation to the effect "that the insurance shall not enure directly or indirectly to the benefit of the carrier, etc. . . . by stipulation in bill of lading or otherwise . . . and that any act or agreement by the assured, prior or subsequent hereto, whereby any carrier . . . is given the benefit of any insurance affected thereon, shall render this policy of insurance null and void." The other two clauses prohibit the insured (1) from making any arrangement whereby the underwriter's right of recovering the loss from the party at fault is released, impaired or lost; and (2) from assigning any interest or subrogating any right under the policy without the consent of the underwriter.

REFERENCES

Gow, William: *Marine Insurance: A Hand Book.*
Chaps. II, III, IV, VI, and VII.
Richards, George: *Treatise on the Law of Insurance.*
Chap. XX, Sections 425-43.
Templeman, Frederick: *Marine Insurance: Its Principles and Practice.*
Chap. II: "The Policy and Its Phraseology."
III: "Causa Proxima."
IX: "Subrogation."
XII: "Return of Premiums."
Winter, W. D.: *Marine Insurance: Its Principles and Practice.*
Chap. VII: "The Policy (Continued). The Termini."
VIII: "The Perils Clause."
IX: "The Policy (Continued). Sue and Labor Clause."

(2) "In case of any agreement by the assured, prior or subsequent hereto, whereby any right of recovery of the assured for loss of or damage to any property insured hereunder, against any person or corporation is released, impaired or lost, which would on acceptance of abandonment or payment of a loss by this Company, have enured to its benefit, but for such agreement or act, this Company shall not be bound to pay any loss, but its right to retain or recover the premium shall not be affected."

(3) "Warranted by the assured, that the assignment of this policy or of any insurable interest therein, as also that the subrogation of any right thereunder to any party, without the consent of this Company, shall render the insurance affected by such assignment or subrogation, void."

CHAPTER VII

TOTAL LOSS

Classification of Marine Losses.— Having considered the types of underwriters and policies, and the main provisions of the contract, we may next turn to a discussion of the types of marine losses. It is here that marine insurance not only differs radically from other branches of insurance, but presents some of its most difficult problems. Here also we meet with a number of expressions which appear again and again in a consideration of marine policy provisions. Briefly classified, marine losses are either "total" or "partial." Total losses, in turn, may be either "actual" or "constructive" (sometimes called "technical"), the latter kind involving the practice of "abandonment." Partial losses, on the other hand, are subject to a threefold classification, namely, "general average," "particular average," and "salvage."

Distinction Between Actual and Constructive Total Loss.— Actual total loss is defined by the British Marine Insurance Act as comprising all cases "where the subject matter is destroyed, or so damaged, as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof."[1] Leading illustrations are the sinking of a vessel or cargo beyond recovery, the destruction of a vessel or cargo by fire, the destruction of the cargo by smoke, water, or other indirect effects of fire, although there may be no actual burning of the goods, or the disappearance of vessel or cargo.[2] Constructive total losses, on the other hand, are defined by the same Act as existing:

> Where the subject matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure has been incurred. In particular, there is a constructive total loss:

[1] Section 57 of the Act.

[2] According to the British Marine Insurance Act an actual total loss may be presumed "where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received."

(1) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and (a) it is unlikely that he will recover his ship or goods, as the case may be, or (b) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or

(2) In the case of damage to a ship where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired; or

(3) In the case of damage to goods where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.

Illustrations of Constructive Total Loss.— To illustrate the foregoing definition we need only refer to a vessel which, having stranded or run ashore, has been but slightly injured and only requires to be released. Yet the cost of freeing the vessel from its position may be so large when compared with its value afterwards that the attempt can be regarded only as a commercial failure. Hence it is that this and all similar cases are termed constructive or technical total losses. Among other leading illustrations there might be mentioned the settling of a vessel in shallow water, where the cost of refloating and repairs would exceed the value of the property when saved; the injury of a vessel by fire and consequential water and steam damage to such an extent as to make the cost of salvage and repairs exceed the repaired value; the damage of a vessel so seriously by collision or otherwise as to make its condition one of irreparability, or to make its actual loss seem unavoidable; or forcible dispossession of ownership through capture. Similarly, in the case of cargo, the damage may be only partial, and yet it may have occurred under conditions which will leave the remaining value, after deducting the costs of conveyance to destination, and of reconditioning the goods, inadequate to meet all the expenses involved. Or the goods may be perishable and their position such that recovery would necessarily involve so much time as to make their destruction certain in the meantime. If the vessel is lost or if the cargo cannot be forwarded there is also a total loss of freight.

Distinction Between American and British Practice.— The foregoing definition was based on the theory that a constructive total loss exists only because the actual loss appeared unavoidable, or because the expenditure involved

in preserving the property from actual loss "would exceed its value when the expenditure had been incurred." In other words, no claim for total loss can be made unless the cost of restoration is equal to one hundred per cent or more of the value when repaired. This is the English practice, and is generally accepted as the fairest. In the United States, however, a totally different rule has been used, and one which works much more advantageously to the insured. Instead of requiring the expenses to at least equal the repaired value, the American rule permits a vessel to be construed as a total loss when the cost of salving the vessel and repairing the damage amounts to more than fifty per cent of the repaired value. But owing to the greater fairness of the English practice, it is being more generally adopted by special agreement in American hull policies.

Nature of Expenses Allowed.— Whichever of the preceding doctrines is used, it is clear that the subject of constructive total losses involves a comparison of expenses with the value of the restored property. Now what expenses may the insured take into account in making up his mind as to whether or not he should regard the loss or damage as total? In the case of the vessel, the expenditure allowed covers the temporary repairs at a port of refuge, the salvage necessary to bring the vessel to a place of final repair, and the permanent repairs at the port of destination. In the case of cargo, the expenditures allowed cover not only the cost of reconditioning, but the outlay required to forward the goods to their destination.

Adjustment of Total Losses.— Little difficulty, as a rule, presents itself in this respect; in fact, no adjustment is required in the overwhelming mass of cases. The insured must simply present proof to show that the loss is an actual or constructive total loss, as the case may be; that he possesses an insurable interest in the property at the time of the loss; and that the loss occurred during the life of the policy and was due to a peril covered by the contract. When the policy is a valued one (and we have seen that nearly all policies are) and when all of the property comprised within the valuation was involved in the misfortune, the underwriter's liability is equal to the amount of the insurance. But when the policy is not a valued one, or

where all the property involved in the valuation was not at risk, the valuation must be proved.

Abandonment.— If the facts warrant the construction of loss or damage into a total loss the interests of the insured require that he should exercise his privilege of "abandoning" the risk to the underwriter. By this is meant that the insured claims payment for a total loss, and is willing to surrender to the underwriter all that remains of the insured property. Abandonment exists only in connection with constructive total losses, as distinguished from actual total losses. Its effect, according to the British Marine Insurance Act, is to entitle the insurer "to take over the interest of the assured, in whatever may remain of the subject matter insured, and all proprietary rights incidental thereto."

In this respect marine insurance presents another radical difference from fire insurance, where the principle of abandonment is purposely excluded by the policy. To quote the Standard Fire Policy: "There can be no abandonment to this Company of the property described." Even where the courts, as in the case of city ordinances prohibiting the reconstruction of certain types of buildings when destroyed by fire to the extent of one-third or one-half, have shown a disposition to construe certain partial losses as equivalent to total losses, fire insurance companies have been prompt in nullifying such decisions through special policy provisions.

Notice of Abandonment.— Should the insured decide to abandon the risk as a constructive total loss he must give the underwriter what is called a "notice of abandonment." No special form of notice is required, but to quote the British Marine Insurance Act, "it may be given in writing or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject matter insured unconditionally to the insurer."

Following receipt of reliable information of the loss, the insured must use reasonable diligence in giving the notice of abandonment to the underwriter. Otherwise, much valuable time might be lost which the underwriter might be anxious to use in saving the property from further loss. But where the insured is not

in possession of the full facts a reasonable time may be used to make further inquiry. All facts known by the insured should be fully revealed to the underwriter; and should any of the facts given be found later to be false, the abandonment will be of no legal effect.

Acceptance of Abandonment.— A notice of abandonment has no effect until it is accepted by the underwriter. No particular form of acceptance is required, and it may be expressed or may be implied from the conduct of the insurer, as for example, an unduly long delay in declining. When once accepted the abandonment is irrevocable by either party, irrespective of subsequent changes in the condition of the property. By such acceptance the underwriter admits the sufficiency of the notice as well as his liability for the loss. But acceptance may be refused by the underwriter, in which case, however, the rights of the insured under the policy are not prejudiced in any way.

As a general rule the insured gives his notice as soon as he concludes that he could not prudently undertake the salvage and restoration of the property, and the underwriter then refuses the same. Having thus safeguarded his interest, as well as those of the underwriter, by giving him a statement of the facts, the insured will faithfully use all efforts, as per the terms of the sue and labor clause, to protect the property, until such time as the constructive total loss character of the risk becomes a matter beyond dispute. Until accepted, the notice of abandonment may be withdrawn by the insured. By mutual consent, also, the insured and underwriter may agree, following an accident, to defer the question of abandonment and leave the matter to be determined by future developments, without the rights of either party being prejudiced. Nor is the insured ever obliged to abandon; instead, the practice is always optional with him, to be exercised or not, as he pleases.

While the abandonment is irrevocable, except by mutual consent, when the notice has been accepted, it does not follow that the underwriter is required to do more than pay for the loss. He is under no obligation to assume also the ownership of the abandoned property, since at times such ownership might carry with it legal liability for liens of one kind or another so great as to render the property worse than valueless. But where the

property has value and the ownership is accepted, it should be noted that the assignment dates from the time of loss. Accordingly the property is taken by the underwriter, subject to all liens against it at that time.

REFERENCES

ARNOULD, JOSEPH: *The Law of Marine Insurance and Average.*
Part III, Chap. VI: "Actual or Absolute Total Loss."
VII: "Constructive Total Loss."
VIII: "Abandonment."

GOW, WILLIAM: *Marine Insurance: A Hand Book.*
Chap. IX: "Total Loss of Ship and Cargo."
X: "Total Loss of Freight."

WINTER, W. D.: *Marine Insurance: Its Principles and Practice.*
Chap. XX: "Total and Constructive Total Losses. War Losses."

CHAPTER VIII

GENERAL AVERAGE

Definition of General Average.— Turning next to a consideration of partial losses, the subject which claims our special attention is that of "average," which involves a discussion of the terms "general average" and "particular average." General average may be defined as covering losses and expenditures which result from the sacrifice of any interest voluntarily made by the master of a vessel, or other duly constituted authority, in time of real distress for the common safety of vessel, cargo, and freight, and which must be repaid proportionately by all the parties benefited. For the sake of clearness the following factors may be enumerated as necessary to make a loss or expenditure come within the limits of general average:

(1) The presence or rapid approach of a fortuitous peril which threatens all the interests in the venture.

(2) The act must be a voluntary one, i. e., must be directed by the master of the vessel or by someone authorized to act in his stead.

(3) The sacrifice must be extraordinary, i. e., must not result from the necessary performance of the contract of affreightment.

(4) The loss or expenditure must be fair and reasonable, i. e., must be reasonably prudent and be made in good faith. What constitutes prudence and reasonableness depends upon the circumstances prevailing at the time, and due recognition must be given to the fact that such situations require decisions to be hastily conceived and executed.

(5) The act must serve a useful purpose, i. e., must meet with some degree of success in saving at least a part of the property involved.

(6) The claimant must not be responsible, through negligence or wilful act, for the loss or expenditure.

Origin and Purpose.— The use of general average, in case of jettison at least, dates back to very early times and antedated

marine insurance as practiced to-day by many centuries. Its date of origin is unknown, but we know that the principle was incorporated in the Rhodian Law about 1000 B. C.

The underlying purpose of general average is to bring justice between the various interests in a maritime venture, when one or more have suffered a voluntary sacrifice for the benefit of the others. Justice demands, for example, that if a shipowner casts away masts and sails, or voluntarily strands his vessel, or incurs expenses by putting into a port of refuge, for the sake of preserving the cargo, he shall not be obliged to bear the loss alone. Likewise if an owner's cargo be sacrificed in quenching a fire aboard the vessel, or be thrown overboard to save the vessel, it would be grossly unjust to make that owner stand all the loss. Hence the introduction of the principle that all such sacrifices should be compensated for by making them a charge upon the value of all other interests benefited.[1] Richards states the matter as follows: "The rule of general average has its basis in the community of interest existing between the owners of ship and cargo, by reason of which losses intentionally incurred for the common safety ought to be equitably apportioned among the interests thereby benefited."[2]

Efforts of Uniformity.— It is important that general average, since it comprises an important part of the commercial law of all civilized nations, should not present a great variation in the rules, regulations, and customs relating to the types of sacrifices and expenses covered, and the method of their adjustment. But no two countries, however, are said to be alike in this respect, and in the United States the law even varies in different states. Much of the complicated nature of general average is traceable to this lack of uniformity, and it is only natural that efforts were made years ago to devise some international code of rules which would outline the losses and expenditures which are to be included or excluded, and thus obviate or reconcile existing differences. Such efforts have met with a large degree of success. In 1864 (at York) and again in 1877 (at Antwerp) the

[1] The origin of the expression "general average" is not definitely known, but leading authorities seem to believe that the words were derived from the concept of assessing a tax.

[2] George Richards: *A Treatise on the Law of Insurance*, 260.

Association for the Reform and Codification of the Law of Nations held meetings to consider the whole matter, and as a result adopted a code on the subject under the name of the "York-Antwerp Rules." These rules were later revised at another meeting in 1890 and are now known as the "York-Antwerp Rules 1890." At present it is very common to endorse policies covering general average losses with the words "subject to York-Antwerp Rules, 1890" or words to a similar effect. Bills of lading also usually contain a provision indicating that these rules should be used in settling any general average claims that may arise.

In the absence of indorsements of this kind, it becomes an important question in international commerce as to what law shall apply in adjusting a general average loss. As a general rule, the law and usage of the port of destination applies, although in some instances, as in the traffic from the United States to the West India Islands, it is customary to have the adjustment made in accordance with the law of the port of departure. In the absence of agreement to the contrary, the regulations prevailing at the port of refuge are followed, if it becomes necessary to break up a voyage. Similarly, if various portions of a cargo are destined for different ports of call, adjustment in compliance with the regulations of each of these ports may be required as regards the respective portions of the cargo destined thereto.

Losses and Expenditures Allowed Under General Average.— Before a claim in general average is allowed the loss or expenditure must meet all of the elements of the aforementioned definition. Consequently, the courts are frequently called upon to decide whether or not a given sacrifice may be properly classed as coming under general average. A vast mass of law has thus come into existence, and many types of losses and expenditures have been definitely declared to come within the proper meaning, while others have been rejected. New problems, however, are constantly arising, and many cases are so near the border line that it is extremely difficult to know whether they constitute general average or particular average. The following list is representative of the leading types of general average sacrifices and expenditures, and will serve to indicate the wide range covered by the subject:

Jettison of deck cargo where usage permits the commodity to be carried on deck.

Consequential losses, such as water damage, arising from jettison if the same is a general average act.

Water or steam damage to cargo incurred through efforts to extinguish a fire.

Damage to machinery, sails or other portions of the vessel as a result of efforts to release a stranded vessel for the common benefit.

Voluntary running of a vessel ashore for the common benefit.

Running short of fuel, although the vessel was properly supplied with fuel for the voyage under contemplation, and thus being compelled to sacrifice a portion of the vessel's stores as fuel, and to incur other expenditures to reach a port of refuge.

Unusual expenditures in putting into and in necessarily remaining in a port of refuge, such as wages and maintenance of crew, pilotage, harbor demands and port charges, expenses involved in the discharge of cargo in order to make necessary repairs, costs of warehousing and reloading the discharged cargo, and expenses connected with the departure from the port after repairs have been effected.

Cost of discharging cargo and supplies into lighters and of reshipping the same when seeking to release a vessel which has run ashore or has been stranded.

Payments made by the master for aid when beneficial to both vessel and cargo; also outlay necessary to acquire funds with which to pay general average expenditures.

Losses and Expenditures Not Allowed Under General Average.—A full enumeration of illustrations where the courts have refused to recognize the general average nature of certain losses or expenditures would be quite as imposing as the list of recognized instances. The following may be selected as most important:

Losses or expenditures which are not due to general average acts, i. e., do not meet all the conditions of the definition of general average already considered.

Jettison of deck cargo where usage does not presume the commodity to be transported in that manner.

Damage to the vessel or its appliances through excessive employment when such use, however, occurred in the usual manner.

Sacrifice or expenditure due to the negligence or willful fault of the interested party.

Sacrifice of articles, although under a general average act, which do not involve a real loss since they were valueless when sacrificed, or were in such condition that they would in any case have become valueless.

Losses or expenditures, although increased by an imminent peril, which injures all interests in the venture but which the vessel owner is naturally expected to assume in performing his obligations under the contract of affreightment.

Procedure in Adjusting General Average Losses.— General average adjustments are usually made by special average

adjusters who receive their appointment from the vessel owner and who, after their engagement, take full charge of all matters pertaining to the adjustment.

Method of Securing the Payments.— It is the shipmaster's duty, upon the arrival of the vessel at destination, to see to it that the various interests which are to contribute the loss shall be kept together until they have properly secured the payments that they are likely to be called upon to make. The security furnished may differ under different circumstances. One method is to give a so-called "general average bond," according to the terms of which the signers obligate themselves to pay all charges when the adjustment is completed. Additional security may, however, be demanded. If any of the cargo is uninsured a cash deposit may be required of the owner to meet the estimated assessment. But when there is insurance the adjuster is usually willing to accept the underwriter's guarantee as sufficient.

Determination of the Contributory Values.— The general average bond, having been signed, and the bond having been secured by cash deposits, or the guarantee of underwriters, the adjuster must next undertake the valuation of all the interests involved. As already stated, the loss must be contributed by the several interests in the venture in proportion to their respective values, i. e., in proportion to the respective values which should be regarded as the amounts saved to the respective owners by virtue of the general average act.[3] Disregarding minor details the vessel will contribute on the value it possesses at the port of arrival, minus any outlay for repairs made following the general average act, but before it reaches the port where the voyage ends. The cargo contributes upon its "gross wholesale value at the port of destination in its then condition" after deducting all charges which must be paid upon arrival, and before the goods can be marketed;[4] while the freight contributes in proportion to the amount stated on the bill of lading.

Determination of the Amount of Loss or Expenditure.— It is next necessary to determine the amount that each interest in the venture might have suffered, a matter which will require

[3] For a detailed statement of the contributing values of vessel, cargo, and freight, *see* William D. Winter: *Marine Insurance*, 305-7.

[4] Winter, 307.

a careful examination of all the expenses and a survey of the damaged goods. Where a steamer carries a cargo in bulk the adjustment is usually comparatively simple. But when the cargo consists of miscellaneous freight owned by several hundred different parties, the adjustment will not only be very detailed, but at times exceedingly intricate. Such adjustments often take a year or more to complete and the final statement sometimes requires more than a thousand pages to set forth all the facts. To complicate matters still more, care must also be exercised to apportion the damage in such a way as to separate the loss which resulted from general average from that which might have been caused by an accompanying ordinary peril. Again, a vessel may succeed in reaching a port through a series of separate general average acts, all of which must be viewed differently in their bearing upon the respective interests involved, since the first act may have affected certain of these interests in such a way as to change their liability for the loss incurred in the next succeeding general average act.

Apportionment of the Loss Over the Contributing Values.— Having determined the value of all the interests in the venture and the amount of loss which each of a number of these interests suffered, it is next necessary to determine the amount which each interest must contribute. The guiding principle in assessing these contributions is that the party whose goods were sacrificed should be placed in exactly the same position as he would be if the goods of some other person had been sacrificed for the common safety. To bring this about it is necessary that the sacrificed interest should also contribute its proportionate share. To return the sacrificed interest in full, without claiming the proper contribution, would mean placing the owner of the same in a favored position, since he would recover his property in full, while the other owners would be asked to make a contribution, and would be out that amount. Thus assuming that the vessel, cargo, and freight are valued respectively for general average purposes at $500,000, $300,000, and $100,000, that there are three cargo owners, "A," "B," and "C," each owning $100,000, and that $20,000 of "C's" cargo has been jettisoned for the common benefit, the following apportionment of the general average loss would be made:

Total value ($900,000) contributes total loss, or	$20,000.00
Property saved ($880,000) contributes 88/90 of $20,000 or	$19,555.55
Property jettisoned ($20,000) contributes 2/90 of $20,000 or	444.45
Total	$20,000.00
Vessel valued at ($500,000) contributes 50/90 of $20,000 or	$11,111.11
Cargo valued at ($300,000) contributes 30/90 of $20,000 or	6,666.66
Freight valued at ($100,000) contributes 10/90 of $20,000 or	2,222.22
Total	$20,000.00

Of the total contribution of $6,666.66 by the cargo, each of the cargo owners, including " C," who represents the sacrificed interest, will contribute a proportionate share. Since each of them owns a third interest in the cargo, each will contribute one-third of $6,666.66, or $2,222.22.

Relation of Marine Insurance to General Average.— It should always be remembered that liability for general average contributions and the right to claim them are matters which are entirely independent of marine insurance. If no insurance exists on any of the property involved the respective owners must bear the contributions themselves. If, however, the sacrificed property is insured, then the underwriter becomes liable for the insured value, and by paying the same comes into possession of (is subrogated to) the right to receive the sum allowed in general average after deducting the contribution which applies to the interest he now represents.

If the contributing interests are insured and the policies cover general average, the underwriter is also liable for general average losses. But in determining the extent of his liability for such contributions a radical difference exists between the law in this country and that of England. According to English law the underwriter pays the whole contribution only if the insured value is equal to the value of the contributing interest; but if it is less, he pays the contribution only in the proportion that the insured value bears to the contributory value. But in the United States, the Federal Courts, as well as the Court of New York, have reached a very different conclusion. They hold that

the policy valuation is conclusive and that the underwriter is liable for all of the general average assessment, despite the fact that the insured value is less than the value upon which the general average assessment was based.[5] From the standpoint of sound theory the English rule is the more equitable, and for this reason is frequently incorporated in American contracts by express agreement between the parties.

REFERENCES

CONGDON, ERNEST W.: *General Average*, 176. New York, 1913.

GOW, WILLIAM: *Marine Insurance: A Hand Book.*
Chap. XVII: "General Average."

LOWNDES, RICHARD: *The Law of General Average, English and Foreign*, (5th ed.), 409. London, 1912.

RICHARDS, GEORGE: *Treatise on the Law of Insurance.*
Chap. X: "General Average."

TEMPLEMAN, FREDERICK: *Marine Insurance: Its Principles and Practice.*
Chap. VII: "General Average."
VIII: "Salvage."

WINTER, W. D.: *Marine Insurance: Its Principles and Practice.*
Chap. XVIII: "Losses. Introduction. General Average."

[5] In *International Navigation Co. v. Atlantic Mutual Ins. Co.* (100 Fed. 304) the steamer St. Paul, worth $2,100,000, was insured for about $1,350,000 in numerous policies in which she was valued at the latter sum. A heavy general average loss having occurred through stranding, the underwriters sought to pay only in the proportion that the insured value bore to the contributory value of $2,100,000. But the court held that: "By the New York rule the amount of the recovery for such damage to the ship and special expenditures is not to be reduced in the proportion of the undervaluation in the policy"; also that "the insurers are stopped by the valuation fixed in the policy from raising that question."

In *Providence and Stonington S. S. Co. v. The Phoenix Co., et al.* (89 N. Y. 550) a general average valuation was made in which the value of the steamer was stated at $275,000. Payment to a wrecking crew and other expenses amounted to $21,840, and the underwriters contended their liability was only such proportion of this amount as the agreed value of the steamer ($75,000) bore to its true value ($275,000) for general average purposes. But the court held this view untenable, and ruled that "the value as agreed upon for the purposes of insurance was conclusive between the parties, and within the limit of the sum insured the plaintiff was entitled to full indemnity for all losses occasioned by the perils insured against."

CHAPTER IX

PARTICULAR AVERAGE

Definition of Particular Average.— While general average covers partial losses arising from voluntary sacrifice for the common benefit of all interests involved, particular average refers to partial losses resulting from accident. According to the British Marine Insurance Act "a particular average loss is a partial loss of the subject matter insured, caused by a peril insured against, and which is not a general average loss."[1] Gow defines particular average as "the liability attaching to a marine insurance policy in respect to damage or partial loss accidentally and immediately caused by some of the perils insured against to some particular interest (as the ship alone or the cargo alone) which has arrived at the destination of the venture."[2] Particular average losses are very important since they exceed all other types of losses in the number of claims presented. They probably also represent the largest proportion of the aggregate financial loss suffered by marine underwriters. General average losses are important, it is true, but their number never reaches a very large volume, while total losses, although very large at times, are comparatively few in number except in time of war.

Specific illustrations may serve to make the aforementioned definitions clearer. Thus loss caused by the actual burning of goods is particular average, while water and steam damage, occasioned for the common benefit through an effort to quench the fire, must be classed as general average. Other illustrations of particular average, among the many that might be mentioned, are damage to a vessel through straining as a result of the flooding of her decks, damage to cargo from sea water which gets into the hold of the vessel through heavy weather, loss of a portion of the vessel owner's collectible freight because of

[1] Section 64.
[2] Gow: *Marine Insurance*, 189. Gow gives this definition as a modification of Arnould's definition.

the destruction of a portion of the cargo through some insured peril, damage sustained through collision, or damage to cargo in the process of unloading. In all of these illustrations the loss must be borne solely by the particular interest, i. e., the vessel, or cargo, or freight alone, as the case may be. As distinguished from general average there is no sacrifice in particular average for the common benefit; no claim can therefore be made for compensation through general contribution. The loss falls exclusively upon those who own or have an interest in the property lost or damaged, unless the same is insured, in which case restitution is made by the underwriter. It is important, however, to exclude so-called "particular charges"[3] from the underwriter's liability under particular average. It is also contended by some that, in its true sense, particular average does not extend to "total loss of an integral part of the cargo," when "a shipment consists of various units."[4]

The problems and principles connected with particular average vary materially according to the subject matter under consideration. It is therefore necessary to view the subject from the standpoint of each of the four leading interests in a marine venture, viz., hull and equipment, freight, cargo, and profits and commissions.

Particular Average on Hull and Equipment.— Particular average adjustments involve the application of many technical rules which are of commanding interest only to expert average adjusters and which it is, therefore, not the purpose of this volume to discuss. Briefly stated, claims for particular average on the vessel are usually allowed on the following basis:

(1) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions,[5] but not exceeding the sum insured in respect of any one casualty.

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[3] As stated in the British Marine Insurance Act: "Expenses incurred by or on behalf of the assured for the safety or preservation of the subject matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average."

[4] *See* Winter: *Marine Insurance*, 313.

[5] In paying for new materials allowance must be made for the value of old materials. It is therefore customary to apply so-called deduction rules, such as "one-third off new for old," meaning that this percentage is deducted from the cost of repairs and that the underwriter is liable only for the balance.

(2) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, providing that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above.

(3) Where the ship has not been repaired and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above.[6]

It will be noticed from the above statement that emphasis must be placed on the reasonable cost of repairing the damage. Care must therefore be exercised to see that none of the expenses are solely for the vessel owner's account, or that they have not been unnecessarily increased in order to hasten the restoration of the vessel. As illustrative of the first danger, the vessel may be in dry-dock to repair some particular average damage, but the owner may regard this as a favorable opportunity to effect additional repairs or alterations. It is clear that the underwriter is not interested in such repairs or alterations, and that their cost should be assumed solely by the insured. The dry-dock expenses, it is true, are mutually beneficial to insured and underwriter, but since each derives a benefit in which the other is not interested, it is necessary that such expenses should be equitably apportioned to meet the merits of the situation, and the underwriter should be liable for only that portion of the repair work which pertains to the particular average damage in question. At other times it may be necessary, or more economical, first to take the vessel into a port of refuge to effect "temporary repairs." Such expense is reasonable if made in good faith and falls within the liability of the underwriter, but the insured must have no ulterior motive of gain, such as a greater promptness in completing repairs. Extraordinary expenditures incurred to make the vessel available more quickly are not a liability of the underwriter, since his obligation is limited to a restoration of the vessel with reasonable dispatch.

A fair valuation of the vessel should also be stated in the policy, since particular average losses are customarily paid by the underwriter in the proportion that the amount of insurance

[6] Richards: *A Treatise on the Law of Insurance*, 254.

bears to the valuation stated in the policy. Low valuations unfairly benefit the insured, since the proportion of the loss assumed by the underwriter increases as the stated valuation of the vessel is lowered.

Particular Average on Freight.— A total loss of part of the cargo, as distinguished from mere damage to the goods, is usually responsible for a particular average loss on freight. This is due to the fact that the vessel is entitled to full freight on cargo which reaches its destination, although in damaged condition, so long as the cargo can still be regarded as existing in specie. But where part of the cargo is lost, or where a portion is so damaged as to be no longer deliverable in specie, and as a result the vessel is unable to earn the collectible bill of lading freight thereon, a partial loss of freight may be said to exist. The measure of indemnity in such cases, according to Richards, "is such proportion of the sum fixed by the policy, in the case of a valued policy, or of the insurable value, in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy."[1]

A few special circumstances connected with particular average on freight deserve special mention. One of these relates to instances where a vessel is obliged to terminate the voyage at a port of refuge where another vessel is available for a continuation of the voyage and at a cost which is less than the gross freight at risk under the policy. Such a substitution must be made, if it can be done, and the particular average on freight in that case will simply be the amount paid to the substituted vessel. Another refers to instances where some peril covered by the policy causes a voyage to be broken up at some port short of destination and where by agreement a proportionate share of the freight is paid. Particular average in such cases consists of the difference between the freight actually paid and the gross freight at risk under the policy. Again, it may happen that the entire cargo is lost, although the vessel is still able to substitute another cargo destined for the original port of destination. Should there be any loss of freight under these

[1] George Richards: *A Treatise on the Law of Insurance*, 255.

circumstances, it will simply constitute the difference between the gross freight originally at risk and the freight obtained on the new cargo.

Particular Average on Damaged Goods.— In case cargo is damaged and reaches its destination, it is necessary to compare the gross sound value of the goods at the port of destination with their market value in the damaged state, and the term value is meant to include freight, duty, and other expenses necessary to place the goods upon the market in question. The percentage thus obtained is then applied to the amount of insurance under the policy.[8] In addition the underwriter must also assume all expenses involved in the settlement of the loss. The sum thus ascertained will be paid by the underwriter on the co-insurance principle, i. e., in the proportion that the amount of insurance carried by the insured bears to the value of the goods. But should the insurance exceed the value of the goods, the underwriter is proportionately liable for more than the loss actually incurred. In this respect marine insurance differs vitally from fire insurance where the principle of indemnity is strictly applied so that the insured is never entitled to more than his actual loss at the time of the fire.

In addition to the aforementioned principles, the adjustment of particular average losses on cargo often involves problems of a very complex nature. In the main these problems have their origin in special "average clauses" contained in the policy, or refer to matters which relate to the ascertainment of values or the extent of damage. In this connection the following rules, defining principles and methods of procedure, may briefly be stated:

(1) Consideration must be given to the cause of damage because marine policies may vary as to the perils they cover with reference to particular average losses. Average clauses, for example, may limit the coverage of the policy to particular average losses occasioned by "stranding, sinking, burning, or

[8] Where the policy is a valued one and part of the cargo is totally lost, the underwriter is liable in the proportion that the insurable value of the lost portion bears to the insured value of the entire cargo. If the policy, however, is an unvalued one and a portion of the cargo is totally lost, the underwriter's liability is the insurable value of the lost portion. In this connection, *see* Richards: *A Treatise on the Law of Insurance*, 256.

collision." Should the cause of the damage be one not covered by the policy, no further effort at adjustment is necessary. It is for this reason that the cause of loss usually constitutes the first inquiry in particular average adjustments.

(2) Should the cause of loss be a peril covered by the policy, it is next necessary to take into account the nature of the particular average clauses contained in the policy under consideration. Marine policies vary greatly in the variety of particular average clauses which they may contain. Reference is had principally to the so-called "memorandum clause" which stipulates the percentage of damage — called the "franchise" — which must occur on various classes of commodities before the underwriter becomes liable for a particular average claim.[9] Additional clauses may be inserted in the contract which describe the method to be used in ascertaining the percentage referred to. All such clauses must be taken into account when adjusting a particular average loss. Ordinarily the underwriter is not liable unless the percentage of loss is equal to or exceeds the franchise stipulated in the policy. If, however, the franchise is attained the underwriter's liability extends to the entire loss and not merely to the excess. But the policy may provide for a "deductible franchise," in which case the underwriter is liable only for damage over and above the franchise.

(3) As has already been indicated, the valuation stated in the policy must be accepted by both parties, even though it be below or above the real market value of the goods. The only exception exists in cases where an unusually high valuation gives unmistakable evidence of fraud on the part of the insured.

(4) Where the goods are placed at auction, and no question is raised as to the insured value, the underwriter may arrange to settle on the basis of a total loss and have the damaged goods assigned to him with a view to reimbursing himself by the amount realized from the sale. Or the insured may be allowed to receive the proceeds of the sale, and the underwriter pay the difference between the amount thus obtained, after deducting all expenses of the sale, and the amount of the insurance. These

[9] For a discussion of the memorandum clause, *see* p. 102.

methods of adjustment are usually followed when the goods are disposed of at an intermediate port.

(5) If the goods reach the port of destination, the underwriter's representative, or an outside appraiser, will make an appraisal of the damaged goods with a view to ascertaining the percentage of depreciation. Said appraiser will then issue a certificate stating the amount and cause of the damage. This certificate is then usually sent to the nearest place indicated in the policy for the payment of the claim. Underwriters prefer to effect a settlement in this manner in order to avoid the uncertainty connected with bidding at an auction market. Where, however, a friendly settlement cannot be reached, there always remains the alternative of determining the amount of loss through a sale of the goods at auction.

(6) Where freight charges and duty must be paid in order to place the goods in the open market at the port of destination, these items are not included in the insured value unless the policy covers the same. Ordinarily, however, these two charges are covered by marine policies. In that case they are added to the amount of insurance and the percentage of depreciation is then applied to the total.

(7) Should the policy cover various classes of goods, each possible of separate valuation, the best practice is to ascertain the percentage of damage suffered by each with a view to applying the percentage to the amount of insurance on each particular article.

(8) Particular average may at times involve a succession of losses under the same policy, i. e., the cost of repairs on one partial loss may be followed later by another partial or total loss, and the two losses combined may exceed the total insurance under the policy. Under such circumstances the marine underwriter is liable, subject to any expressed provision in the policy, for the entire loss. In this respect marine insurance is peculiar, and on first thought the principle may seem very unfair. But it must be remembered that merchants are often unable to receive prompt advice as to the magnitude of a loss or the cost involved in repairs, especially in long-distance trades. On being informed of the situation, they cannot be expected to negotiate additional insurance to cover the cost of repairs which may have been

incurred. Meanwhile a total loss might occur which would cause the merchant to be the loser for reasons over which he has no control. While the practice referred to increases the underwriter's liability, it should be remembered that he has the privilege, since he knows of the existence of the principle, to make allowance for the extra hazard in figuring his rate of premium.

Particular Average on Profits and Commissions.— These items grow out of the shipment of cargo, and a partial loss of the goods may involve a partial loss of profits and commissions. The basis of particular average adjustment here is similar to that explained for cargo. But the question may arise as to whether a loss of profits or commissions really occurred. At the time of effecting insurance on these items, the market price of the goods might be such as to assure a profit. Subsequently, however, and before the arrival of the cargo at destination, prices may have so changed as to leave no profit whatever in the transaction even should the cargo arrive in good condition. With insurance on profits, no profit would have been derived had the goods reached destination in sound condition. Now the question may be raised as to whether the underwriter should pay the insured profit, which was really not lost at all, simply because the goods happen to reach destination in a damaged state. Opinions may differ on this question, but the position taken by underwriters is generally to the effect that, since the premium was accepted at a time when the prospect of a profit did exist, the insurer should pay in case a loss to the cargo occurs. Here, emphasis should be given to the "valued" principle in marine insurance, according to which the indemnity is based upon the insured value, barring cases of evident fraud, as distinguished from the real value.

Salvage.— In marine insurance this term has a double meaning, i. e., it may refer (1) to the property which has been saved, and (2) to the award granted under maritime law to a salvor for service rendered in saving property at sea. The latter meaning is the one to which attention is now directed. To be a true case of salvage, the service must have come from independent third parties and must have been of material assistance in saving the property. As stated in the British Marine

Insurance Act, salvage charges refer to the "charges recoverable under maritime law by a salvor independently of contract," and "do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person in employ for hire by them, for the purpose of averting a peril insured against." Salvage does not come under the "sue and labor clause" for the reason that the salvors were not in the service of the insured.

Frequently the owners of the property and the salvors cannot reach an amicable agreement as to the remuneration to be paid for salvage service. Resort must then be had to an Admiralty Court to fix the remuneration, and this amount will necessarily depend upon the circumstances of the case, such as the value of the property saved and the extent of the labor and other expenses involved in the salvage operation. The remuneration as thus determined by the court after a full consideration of all the facts is called a "salvage award." In the meantime, however, the salvor has a "possessory lien" on the property if it is in his possession; and, if not in his possession, he has a "maritime lien" enforcible in an Admiralty Court. The salvage award is usually apportioned over the values of the various interests saved, just as in the case of general average, and is recovered from the underwriter in exactly the same manner, providing the contributing interests are insured. Under hull policies, it should be stated, liability for salvage charges is usually assumed under two clauses, the wording of which takes approximately the following forms:

It is further agreed that in the event of salvage, towage or other assistance being rendered to the vessel hereby insured, by any vessel belonging in part or in whole to the same owners or charterers, the value of such services (without regard to the common ownership of the vessel) shall be ascertained by arbitration in the manner above provided for under the collision clause, and the amount so awarded so far as applicable to the interest hereby insured shall constitute a charge under this policy.

General average and salvage charges payable in accordance with York-Antwerp Rules, 1890, if so provided for in the contract of affreightment, but as to matters not provided for in the York-Antwerp Rules, 1890 (when the contract of affreightment provides for such rules), and also excepting that when the contract of affreightment does not provide for such rules, general average and salvage charges shall be payable in accordance with the laws and usages of the port of . . .

REFERENCES

ARNOULD, JOSEPH: *The Law of Marine Insurance and Average.*
Part III, Chap. V: "Particular Average."

GOW, WILLIAM: *Marine Insurance: A Hand Book.*
Chap. XII: "Particular Average."

TEMPLEMAN, FREDERICK: *Marine Insurance: Its Principles and Practice.*
Chap. V: "Particular Average."

WINTER, W. D.: *Marine Insurance: Its Principles and Practice.*
Chap. XIX: "Particular Average."

CHAPTER X

CARGO INSURANCE

Having outlined the several types of losses, attention may next be directed to a discussion of the leading kinds of marine insurance. According to customary classification, these are cargo, hull, freight and builders' risk insurance. With respect to all, numerous features have already been discussed in previous chapters, such as the valued policy principle, different types of policies, the sue and labor clause, other insurance, subrogation clauses, implied warranties, and the ordinary policy provisions common to all types of insurance. The following four chapters have for their main purpose the presentation of those principles and practices which are solely or primarily used in connection with one or the other of the kinds of insurance referred to. Rate-making problems, however, are reserved for collective treatment in a separate chapter.

Extent of Cargo Insurance.— As contrasted with the other types, cargo insurance is by far the most important as regards volume and the number of interests involved. Not only does the short duration of the risk, usually limited only to the voyage, insure a frequent turnover of the underwriter's capital, but a single vessel may have aboard several hundred cargo interests, whereas the vessel, and usually also the freight, represents but one. Returns for 1918[1] clearly show that American companies derive by far the largest share of their business from cargo insurance, and many reported that they do not emphasize hull insurance. Of sixty-three American companies, four transacted no hull and freight insurance at all; twelve derived less than ten per cent of their total marine income from hull and freight insurance; nineteen less than fifteen per cent; twenty-four less than twenty per cent; and twenty-eight (nearly one-half the

[1] Made to the Committee's Questionnaire in the investigation of marine insurance by the Subcommittee on the Merchant Marine and Fisheries, House of Representatives, 66th Congress, 1st Session.

total number) less than thirty-three per cent. Almost all of these companies received nearly all of the balance of their marine premium income (builders' risk premiums constituting a very small portion) from cargo insurance. Approximately the same situation was revealed by the reports furnished by the American branch offices of foreign admitted companies.

Duration of the Protection on a Given Shipment.— Ordinarily the underwriter becomes liable as soon as the goods are loaded on board the vessel and continues so until the goods are safely landed. Deviation, however, is permitted to the extent that the vessel may proceed to, and stay at, any ports or places if obliged to do so by stress of weather, or other unavoidable accident. By endorsement the underwriter's liability is often made to commence from the delivery on dock, or from some place in the interior, until delivered in the insured's warehouse or other place of storage at destination. The warehouse to warehouse clause, already referred to, represents the broadest coverage since it protects the goods from the warehouse at the initial point of shipment to delivery at the warehouse at destination. By special endorsement the underwriter's liability may also extend to the risk of lighterage to and from the vessel.

The Memorandum Clause.— This very important clause is a conspicuous feature in every cargo policy and may be defined as an enumeration of commodities, arranged in groups, concerning which there is a limitation of the underwriter's liability for particular average. In its original form Lloyd's policy placed no limit upon the liability of the insurer. The development of the marine insurance business, however, and the growing complexity of commerce, soon demonstrated that some limitation was essential. Hence, in 1749, a clause called the "memorandum" was inserted, according to which the most important articles of trade were classified into three groups, and each group subjected to a definite limitation as regards the liability of the underwriter.[2] A similar limitation was introduced in

[2] At present the clause in Lloyd's policy reads:
N. B.— Corn, Fish, Salt, Fruit, Flour, and Seed are warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are warranted free from Average under Five Pounds per Cent; and all other Goods, also the Ship and Freight, are warranted free from Average under Three Pounds per Cent, unless general, or the Ship be stranded.

American policies in 1840. So detailed has the "memorandum" become in some cases that the company's liability is limited with respect to considerably over one hundred specified articles or classes of articles. Changes have been made from time to time in the memorandum to meet the needs of commerce in different places, so that no uniformity can be claimed with respect to the articles enumerated in different policies. As illustrative of the classes into which commodities are grouped, the following widely used clause may be cited:

It is also agreed, that bar, bundle, rod, hoop, and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, brooms, wicker ware and willow (manufactured or otherwise), straw goods, salt, grain of all kinds, rice, tobacco, Indian meal, fruits (whether preserved or otherwise), cheese, dry fish, hay, vegetables, and roots, paper, rags, hempen yarn, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking glasses, and all other articles that are perishable in their nature, are warranted by the assured free from average unless general; hemp, tobacco stems, matting and cassia, except in boxes, free from average under 20 per cent, unless general; and sugar, flax, flaxseed and bread, are warranted by the assured free from average under 7 per cent, unless general; and coffee in bags or bulk, pepper in bags or bulk, free from average under 10 per cent, unless general. Profits warranted free from claim for general average, but subject to same percentum of partial loss as if the insurance were on goods. In case a total loss of profits be claimed, the underwriters to be entitled to a credit of the same percentum of salvage as if the insurance were on goods, and in case of contribution in General Average for any portion of the goods at the customary sound value, this Company to be free from claim for loss on such portion. Not liable for loss arising from wet, breakage, leakage or exposure of goods shipped on deck.

Frequently the following paragraph is also made a part of the memorandum clause.

Warranted by the insured free from damage or injury, from dampness, change of flavor, or being spotted, discolored, musty or moldy, except caused by actual contact of sea water with the articles damaged, occasioned by sea perils. In case of partial loss by sea damage to dry goods, cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise as far as practicable. Not liable for leakage of molasses or other liquids, unless occasioned by stranding or collision with another vessel.

Meaning of the Memorandum Clause.— According to the first paragraph of the clause, certain articles, which are very susceptible to damage, are "free from average, unless general." Such

articles, in other words, are insured only against general average and total loss. As regards other articles, owing to their smaller susceptibility to damage, the underwriter assumes liability for partial losses if amounting respectively to twenty per cent, seven per cent, or ten per cent. As regards general average losses, however, the underwriter assumes full liability, since the phrase "unless general" is used in connection with the description of each group of commodities. In practice underwriters are willing for a sufficient extra premium to protect all the articles mentioned in the memorandum clause against all kinds of loss resulting from perils covered by the policy. Written agreements of many varieties are thus used to modify the clause. It is also a general practice to include another clause to the effect that "no partial losses or particular average are in any case to be paid, unless amounting to five per cent," or some other stated percentage.

Immediately after the enumeration of the several groups of articles, there follow the words "profits are warranted free from claim for general average, but subject to the same percentum of partial loss as if the insurance were on the goods." The purpose of this clause is to provide for the contingency of having a total loss of profits resulting from only a partial loss of the goods, because of a forced sale of the same in their damaged condition. Since profits may be destroyed much more readily than the goods themselves, the underwriter is justified in providing that "the same percentage of partial loss shall be paid on profits as on goods." Should a total loss of profits be claimed, the policy next provides that the underwriters are "to be entitled to a credit of the same per centum of salvage as if the insurance was on goods." It is furthermore provided that "in case of contribution in general average for any portion of the goods at the customary sound value, this Company to be free from loss on such portion." This wording is designed to protect the underwriter against the effect of a rise in the market price of the goods. Since no premium was received on the increased market value of the goods, the underwriter is relieved of liability for the general average contribution on such increase in value.

The last portion of the clause frees the underwriter from loss or damage resulting from certain enumerated causes. Thus

if the insured carelessly allows his goods to be shipped on deck where they are subject to the influence of the weather, heavy waves washing the decks, flying spray, etc., there is no liability "for loss arising from wet, breakage, leakage or exposure of the goods." But even where goods are shipped under deck, there are many kinds of articles whose inherent nature is such as to be injured easily by the absorption of odors from other cargo, or from discoloration or moldiness caused by moisture and dampness in the hold of the vessel. Hence the underwriter may provide against liability for such damage or loss, unless "caused by actual contact of sea water with the articles damaged occasioned by sea perils." Similarly, there shall be no liability for "leakage of molasses or other liquids, unless occasioned by stranding or collision with another vessel." As a further protection, the underwriter requires the insured to separate the damaged units of the shipment from the undamaged, provided the cargo is thus capable of being segregated. The settlement of the loss is then made on the damaged units only; and if a sale is necessary to ascertain the loss, only the damaged units are sold. It should be added that all expenses involved in the separation referred to are assumed by the underwriter.

Reasons Justifying the Clause.— Several reasons justify the use of the memorandum clause in cargo policies. Probably the most important of these is the elimination of numerous irritating disputes with the policyholder. Owing to their inherent nature, certain commodities are much more susceptible to frequent small losses resulting from dampness, sweating, change of flavor, atmospheric conditions and other reasons. Such losses do not involve a legal liability on the part of the underwriter, yet will cause an endless amount of misunderstanding if not specifically defined in the contract. It is only natural for the policyholder, who, in the absence of any reference to the matter in the policy, may be unacquainted with the insurer's legal liability, to attempt to obtain indemnity from his underwriter when he receives damaged goods.

If possible, it is also desirable to place all insurance upon cargo on approximately the same basis, i. e., to place the various classes of goods in proper relationship to one another. By placing the several classes of goods on an equal footing it is

possible, in a measure at least, to charge a uniform premium on all kinds of articles composing the shipment. If the natural quality of the various classes of goods were ignored, the rates would necessarily have to differ greatly. But by using different percentages to indicate the extent of loss before liability attaches, the several groups of articles are counterbalanced in a measure so that the underwriter's liability for all kinds of goods is approximately equal, thus enabling him to charge a uniform premium.

As already explained, it is customary not to pay partial losses in any case unless they amount to some agreed percentage like five or three per cent. Such a provision serves the purpose of eliminating numerous small losses, which in the aggregate, however, would constitute a very large proportion, if not the major part, of the grand total of marine losses. There would also be the heavy expense connected with the adjustment of innumerable small claims. If all such losses and their accompanying adjustment expenses were assumed by underwriters, the cost of marine insurance would probably be doubled, thus placing a needless burden upon commerce. The real purpose of marine insurance after all is the granting of protection against some real hazard, and not the assumption of every trivial loss that may occur. Such losses, as a rule, are sufficiently regular to be considered as an item in the cost of operation and should be taken care of by the profits of the business. And even if they were assumed by the underwriter, it is questionable whether the insured would be benefited financially because the cost of adjusting all such minor losses would in all probability exceed the losses themselves.

Ascertaining the Memorandum Percentages.— In ascertaining whether the memorandum percentages (the so-called "franchise") have been reached, no consideration is given to general average; nor can extra charges for proving the claim or making the survey be included in the loss in order to obtain the percentage. Regard is had only for particular average, and if the claim here equals or exceeds the percentage mentioned, then the whole damage (not merely the excess), plus the extra charges must be borne by the underwriter. But all charges incurred for saving and preserving the property are recoverable, as has already been explained, under the sue and labor clause.

In voyage policies it is usual to make the insurer liable by combining successive losses, each of which may be less than the stipulated percentage. On the other hand, in time policies only the losses of one round voyage are combined to determine the percentage, and not all losses incurred during the whole period covered by the policy.

At times so-called deductible average clauses are employed, some such wording as the following being used: "Free of particular average under ..... per cent, which is deductible." Under this practice the underwriter is not liable for the entire loss if the minimum percentage is reached. Instead, all loss up to the percentage (here called the deductible franchise) is deducted from the claim, and the underwriter is only liable for the excess. It must be apparent that the underwriter's liability is thus greatly reduced, and as a result the rates charged are correspondingly lower.

Use of Separate Valuations or "Series."—In view of the increase in the size of vessels and cargoes, it soon became apparent that, although the percentage mentioned might be small, the absolute loss represented thereby might be unduly large ($10,000, for example, on a cargo of $100,000 under a ten per cent limitation). Consequently it is now quite common to subdivide risks as regards the application of the percentages. Thus a cargo may be divided into "series," each depending on the nature of the subject matter (as ten bales of cotton, ten chests of tea, or one bale of wool), and the underwriter made liable where the loss in respect to one of these series reaches the proper percentage. Likewise, in the case of a vessel, separate valuations are often introduced for the hull, machinery, fittings, etc., with provision that the percentage rule should apply to each valuation separately.

Other Average Conditions.— Numerous other average clauses are used in cargo insurance, and nearly all have an important bearing upon the rate of premium. Chief among these are the following two:

(1) "F. P. A. A. C." (Free of Particular Average American Conditions) Clause, which reads "Free of Particular Average *unless* caused by stranding, sinking, burning or collision with another vessel."

(2) "F. P. A. E. C." (Free of Particular Average English Conditions) Clause, which means "Free of Particular Average unless the vessel or craft *be* stranded, sunk, burnt or in collision."

There is a vital difference between the F. P. A. A. C. and the F. P. A. E. C. clauses, owing to the legal construction placed by the courts upon the particular wording used. Under the American form the underwriter is not liable for partial losses unless one of the four enumerated casualties has been the proximate cause. The English form, however, renders the underwriter responsible for partial losses which may be caused, previously or subsequently to the occurrence of one of the four stipulated hazards, by some casualty not at all related to stranding, sinking, burning or collision. In other words, should any one of the four casualties happen, even though in a technical sense, the underwriter stands to lose all protection under the clause for the balance of the voyage and will be responsible for partial losses occasioned by any of the numerous perils covered by the policy. A temporary stranding of only a few hours without the slightest injury to the cargo will nullify the clause for the remainder of the voyage and subject the underwriter to the ordinary provisions of the policy. Or it may happen that a heavy water damage is occasioned by stress of weather. If none of the four casualties occurs no portion of this loss is collectible. But assuming that subsequently there be a slight stranding or collision, automatically the clause will be changed into a "subject to average" insurance and the underwriter becomes liable.

Such an interpretation was certainly not the original intention of the framers of the clause. The interpretation given by the courts is regrettable, since it not only injects a serious speculative element into marine insurance, but is also apt to involve a moral hazard in that the insured, when owner of both the cargo and vessel, might, for example, effect a technical stranding with a view to changing his "free of average" insurance, obtained at a lower rate, into insurance which covers partial losses caused by any of the perils enumerated in the contract. These shortcomings are all the more unfortunate when we reflect that the English form is used much more widely than the American form. Its general use, however, combined with the desire to eliminate the possible effects of the legal interpretation referred

to, has led to the adoption of numerous modified forms of the F. P. A. A. C. clause, which have for their purpose the exclusion of partial losses caused by certain casualties.

Other Cargo Clauses.— Under this head may be grouped the many scattered clauses and warranties which are found in examining a large number of policies. Possessing so many phases, as does cargo insurance, it is only natural that the needs of both merchants and underwriters should require numerous modifications of ordinary policy provisions which were designed to apply only to a general situation. To enumerate them all is quite impracticable, so an attempt will be made merely to indicate their nature by giving the principal groups under which they may be classified. These groups are six in number, and comprise:

(1) Those exempting the underwriter from the payment of certain losses and expenses. Thus it may be stipulated that the underwriter shall not be responsible for the loss of time; that no claim shall be made in general average arising from the loss or jettison of merchandise loaded on deck; that while goods are on railroad or other land conveyance, only the risks of fire, collision, derailment and loss occasioned by rising navigable waters are covered; that while goods are on wharf they shall be liable only for the risks of fire and rising navigable waters; that shipments of live stock are warranted free from mortality and jettison; and that liability is limited to a stipulated maximum for any one vessel or conveyance, or any one place, at any one time.

(2) Those which prohibit, restrict, or otherwise regulate the carrying of certain commodities. Such clauses are innumerable in leading trades like fruit, refrigerated goods, hides and skins, dressed meats, machinery, etc.

(3) Those which extend the underwriters' liability to certain additional risks. The risk of lighterage to and from the vessel may thus be assumed, and a large variety of clauses relate to this important subject. Another clause extends the policy to cover customs duties chargeable upon the merchandise insured upon arrival and entry; while another provides that, should navigation be interrupted by ice, the vessel is at liberty to discharge the cargo at any neighboring port, the risk to continue until the safe arrival of the goods at their destination by land carriage or otherwise.

(4) Those which waive important marine insurance principles in the interest of the insured. The importance of the implied warranty of seaworthiness of the vessel was emphasized in a previous chapter; yet an endorsement may be agreed to whereby "seaworthiness of vessel and / or vessels and / or craft is hereby admitted as between underwriters and assured." With reference to negligence, the policy may provide by endorsement that "the presence of the Negligence Clause and / or Latent Defect Clause in bills of lading, and / or charter party," is not to prejudice the insurance.

(5) Those which relate to matters connected with valuation and adjustment. As an illustration there might be mentioned the so-called "Valuation Clause," which declares that "the sound value at the port or place of destination outward is to be deemed not to exceed the purchasing price at the shipping port, and ten per cent added thereto, exclusive of duty and freight." Proper notice of loss is often required by stipulating that, in the event of a partial loss on merchandise, the underwriter shall have notice of such damage within, say, eight days after the landing of the goods. In certain important trades the settlement of losses may be subject either to the "Loss in Weight," or the "Loss in Test" clause, the first meaning that the loss will be settled on the basis of the reduction in the weight of the cargo as shown by the weight records, while the second method requires the damage to be determined by a comparison of the sound with the damaged value.

(6) Those which define the war hazard. The war clause customarily used in marine insurance has already been discussed in a previous chapter. But the recent World War, with its new methods of warfare and its new interpretation of international law by the several belligerents, led to the adoption of numerous additional clauses. The following list will serve to indicate their character:

Warranted no German, Austrian or Turkish ownership, interest, consignee, or destination; warranted free of condemnation on the ground of such ownership, interest, consignee, or destination.
Warranted neutral.
Warranted American property.
Warranted neutral ships and neutral property.
Warranted free from British and Allied capture.
Warranted to sail with convoy.

Warranted no contraband of war.

Warranted free from any claim arising from capture, seizure, arrest, restraint, preëmption or detainment by the British Government or their Allies.

Special Types of Cargo Insurance.— Three special forms of insurance are customarily classed under cargo insurance, although in certain essential particulars the contracts differ from those used ordinarily to protect merchants.

Insurance Issued to Common Carriers.— Such insurance has assumed importance only in recent years and has its basis in the fact that common carriers by water have had their common law liability greatly reduced by legislation. Thus the Harter Act provides "that if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel or owners, agent, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel, etc."[1]

As a means of attracting business many carriers either take cargo on the basis of freight rates which include insurance, or give the shipper the benefit of their facilities to negotiate insurance for the protection of cargo entrusted to them. The contract may take either the blanket or floating form, i. e., the carrier may either agree to pay a definite annual premium, or to report its risks coming under the policy from time to time. Often these policies are for such large amounts that the risk is distributed among several underwriters on some share or participation basis.

The insurance is usually for the account of the transportation company "as carriers, forwarders, bailees, custodian or otherwise, as well as for the account of the owners of the property transported," and the carrier is "recognized as the agent and trustee for and in behalf of the owners of said property for all purposes of this insurance, with authority to bring suit in their own name to recover loss or damage thereto, and without any right on the part of the insured to set up any exemption of carrier from liability by reason of anything contained in their

[1] *See* Appendix XIV, 253.

bills of lading or contracts of affreightment or otherwise." The coverage is also very broad as a rule, the insurance applying "per steamers of the carriers or other steamers run or employed by them, including risk on wharves, and lighterage at ports of loading and discharge, whether by assured's own or by lighterage employed by them," and covering all kinds of merchandise and property "against loss, damage, and detriment arising from, caused by or growing out of any and all the risks of fire, ocean and / or inland navigation and transportation; fully to indemnify for all loss and damage, general average and salvage costs, charges and expenses to said property, without regard to the usage, rules and customs of marine underwriters, anything to the contrary notwithstanding." In arriving at the premium it is customary to classify freight and, as regards each class, to assign a value per ton of weight.

Parcel Post Insurance.— This form of insurance covers goods against loss or damage from any cause, except as otherwise stated, while in transit by parcel post or registered mail from the time the property passes into the custody of the Post Office Department for transmission until arrival at the stipulated address. Many unsatisfactory features are connected with this form of insurance, among the principal of which are the difficulty of obtaining the proper proofs of loss, since it is usually impossible to ascertain the vessel on which the shipment was made, and the frequent impossibility of determining the cause of loss, such as fire, marine perils, or theft. As a rule the policy does not insure money or securities, or merchandise sent on approval.

Merchandise easily susceptible to deterioration is protected only against fire, theft, pilferage and non-arrival. Exemption against loss also exists: (1) Where goods are inaccurately or insufficiently addressed, improperly or insecurely wrapped or packed, or on which the postage is not fully prepaid; (2) where the packages bear descriptive labels on the outside which tend to describe the nature of the contents; or (3) where the loss is caused by reason of war, riots, strikes, etc. The premium per package is graded according to a schedule of values, and it is usually warranted by the insured, "that each package shipped by Government Parcel Post, valued at $100

or less, will be insured with the Government for at least 50 per cent of the actual value, and that each package valued in excess of $100 will be insured with the Government for not less than $50."

Registered Mail Insurance — Securities, Currency and Bullion.— Very valuable articles, such as currency and securities, are usually sent by registered mail, and under these conditions shipments are much more susceptible to careful supervision and tracing. Registered mail policies covering such articles of value contain provisions especially safeguarding the underwriter. It is usually stipulated that shipments of currency, stocks, bonds, or other evidences of value shall not exceed a stated value in each registered package and that "the packing and sealing of the package containing the property insured hereunder shall be witnessed by two adults, one of whom shall have charge of same until deposited and registered at the Post Office." Sometimes it is provided that a notary public shall count the contents, seal the package, and certify to the facts.

Lost securities, like stocks and bonds, are usually reissued on the condition that the owner furnish a perpetual corporate bond, which will indemnify the party reissuing the same in the event of the reappearance of the lost security in the hands of an innocent holder, the cost of such a bond being assumed by the loser. Insurance on currency, on the contrary, is much more hazardous, since there is no replacement in case of loss. Bullion and currency shipments are also often made on bills of lading, and at times such shipments assume very large proportions. The hazard involved, however, is limited practically to total loss only, since such shipments are insured from bank to bank and are surrounded with every known safeguard.

REFERENCES

Gow, William: *Marine Insurance: A Hand Book.*
Chap. XI: "The Memorandum — F. P. A. Clause."
Rush, Benjamin: *Explanation of the Ordinary Marine Cargo Form.*
Address before the Fire Insurance Society of Philadelphia, 1916.
Winter, W. D.: *Marine Insurance: Its Principles and Practice.*
Chap. X: "The Memorandum Clause."
XI: "Cargo Insurance as an Underwriting Problem."
XII: "Specific Cargo Risks."

CHAPTER XI

HULL INSURANCE

Extent of.— This branch of the marine insurance business is the second most important of the four general divisions outlined in the preceding chapter. As contrasted with cargo insurance, hull policies usually run for a period of time, like a year, and owing to the longer duration of the risk, the underwriter's capital is turned over much less frequently. The premium, also, is usually a much larger percentage of the amount of insurance, ranging in annual time policies from five to six per cent on the average steamer.

Returns for 1918,[1] as pointed out in the previous chapter, show that comparatively few American companies, or the branch offices of foreign admitted companies, derive more than one-third of their marine premium income from hull insurance. In fact, of the sixty-three American companies which reported their figures only thirteen derived fifty per cent or more of their premium income from this branch of the business. One-third received less than twenty per cent, and one-half less than thirty-three per cent. The practice of exporting marine insurance directly to the foreign market, without the insurance passing through the medium of any American underwriting office by way of reinsurance, is resorted to particularly in case of hull insurance. Competent underwriters have estimated such exported insurance to be at least fifty per cent of all American hull insurance. Fifty-one of the sixty-three companies referred to reported that they did not emphasize hull insurance. Twelve companies explained that they have found their hull business to be unprofitable, considering a period of years; fourteen reported that they found only a small profit in hull insurance in pre-war times, while at present the situation is still more unfavorable

[1] Made to the Committee's Questionnaire in the investigation of marine insurance by the Subcommittee on the Merchant Marine and Fisheries, House of Representatives, 66th Congress, 1st Session.

because the enormous increase in the cost of repairs and salving has not been accompanied by a corresponding increase in premiums; and sixteen state that competition of companies located in foreign countries, and the facility with which owners and brokers export marine insurance to such countries, preclude any hope of reasonable success.

Types of Hull Policies Classified.— Vessels are customarily grouped into four main types, namely, sail, auxiliary sail, steamers and power boats. Each of these broad classes presents its peculiar problems to the underwriter, and these must be met through the use of specially adapted policies and endorsements. In a later chapter it will be shown how underwriters coöperate in so-called underwriters' associations — like the American Hull Underwriters Association, the Atlantic Inland Association, American Schooner Association, Provincial Underwriters' Association, Yacht Association, and Steam Schooner Agreement (Pacific Coast)— for the purpose of adopting uniform conditions and practices with respect to various types of hulls. A further classification is possible, depending on the nature of the waters navigated or the particular use served by the vessel in question. Thus there are policies labeled as "steamboat only," "tug," "yacht," "whaling and fishing," "canal hull," "schooner," "barge," "lake hull," "river hull," etc. While these various policies resemble each other in their general form and essential features, there are nevertheless important differences, especially by way of additional clauses designed to adapt the insurance to the varying conditions that prevail in the given trade or with respect to the particular vessel under consideration.

Each of the foregoing classes of hull policies may be divided into "voyage" and "time" policies. Voyage policies cover the risk pertaining to a given trip which is usually defined as beginning at a specific port, extending possibly to one or more intermediate ports, and ending at a specified time following the arrival of the vessel at a designated port of destination. Time policies, on the contrary, are not limited geographically, but attach at a stated date and continue in force for a stated period of time, with the customary provision for an automatic renewal for a stated period in case the vessel should be on a voyage at the expiration of the term. In England the maximum time

limit of term policies is one year, but in the United States no such limitation exists. In practice, however, American policies are almost always limited to one year, although at times they are written for a shorter period.

Fleet Insurance.— Another classification is that of "fleet insurance," as contrasted with the insurance of a single vessel. Where a large number of steamers is owned by a single corporation it is manifestly a great convenience to have all covered on time under a single policy, particularly when, as will be explained in the chapter on Reinsurance Agreements, the entire amount of insurance, often amounting to several millions, may be accepted as a single account and then distributed by the insurance company on some share or participation basis among a large number of other underwriters.

By insuring a number of vessels jointly a more favorable rate of premium may also be obtained as a rule. A single vessel must be judged by itself, and if in poor condition may fail to obtain insurance altogether or, at least, be underwritten at a very high rate. A fleet of vessels, however, has usually been built up in the course of a considerable number of years, and thus represents an average of old and new or good and inferior vessels. If the vessels composing the fleet are considered separately, the underwriter will naturally be inclined to accept the good and avoid the inferior. But under fleet insurance he is confronted with the proposition of insuring "all or none." His privilege of free choice as between the vessels is limited. He will thus accept the entire fleet, either as an individual or in conjunction with other underwriters. But his retained line will necessarily be limited to a certain percentage only, the balance being spread over other underwriters on some share or participation basis. The rate will be uniform for all the insurance on the fleet, and will probably be arrived at by segregating the vessels of the fleet into groups and applying the premium on each group, the final premium being the sum of the several group rates.

At one time it was the almost universal practice for large fleets of steamers to be owned and operated by a single corporation. While this is still the case in many instances, there has developed a wide-spread practice of having a separate corpora-

tion formed (the corporate name usually including the name of the particular vessel) for the ownership and operation of each individual steamer. In other words, the ownership and management of the vessels composing a large fleet may be distributed over as many separate corporations as there are vessels in the fleet. Legally, such a practice has the advantage of limiting liability, in case of the assessment of damages for collision or otherwise, to the individual vessel involved rather than the entire fleet as would be the case if all vessels were owned by the same corporation. In fact, should the vessel at fault also be destroyed, there might be little left of the assets of the corporation, representing that vessel, to meet the damages assessed against it. In practice, however, uniformity of action may be obtained through a managing company chartering all the individual vessels, or attending to the loading and management of the same. Despite the growing practice of distributing the ownership of vessels composing a group, fleet insurance has nevertheless assumed large proportions, and its importance is indicated by the fact that the American Hull Underwriters' Association until recently had as one of its main functions the recommendation of rates at which various fleets of steamers should be underwritten by its members.

Special Risks.— Lack of employment, necessity for extensive repairs, or other unavoidable circumstances may necessitate laying up the vessel in port for long periods of time. Under such conditions the owner may want a so-called "port risk only" policy, the purpose of which is to protect the vessel within the limits of the port during the term arranged for. The insured is given the privilege of transferring the vessel from one dock to another, or of placing it in dry-dock for purposes of effecting proper repairs. Hazards of collision and loss or damage to machinery or boilers, as per the collision and Inchmaree clauses (to be discussed later), are also assumed by the underwriter. Port risk insurance does not include hazards connected with navigation, and the premium is thus comparatively lower. The rates are charged on either a monthly or annual basis, but in the latter case privilege of cancellation will be given, the amount of return premium being a fixed percentage of the annual rate as per the insurance company's published short rate table.

Vessel owners may also desire, or be obliged, to insure their vessels against "total loss only." At times, however, such policies are made to include general average losses and salvage charges. The practice of insuring against total loss only may be necessary in order to obtain a favorable rate when the inferior condition of the vessel would cause the premium on full coverage insurance to be exceedingly high. Again, sufficient full coverage may be difficult to obtain on vessels of very high value, and accordingly the final lines of insurance are placed on the "total loss only" plan. But in order to protect underwriters issuing full coverage contracts it is usually found necessary to limit the amount of "total loss only" insurance to a stipulated percentage of all the insurance carried.

It may also happen that vessel owners desire to protect themselves against legal liability for damage to cargo in their custody, or for loss of life or personal injury, owing to negligence attributable to themselves or their agents. Such legal liability is not covered by the ordinary marine insurance policy, yet is of great importance. To protect against this type of claim, mutual protective associations — so-called shipowners' clubs — have been formed. Associations of this character have existed in Great Britain for many years, and recently one was established under the laws of New York.

Seaworthiness.— The implied warranty of seaworthiness has already been discussed from the standpoint of the elements of fitness necessary to make the vessel an insurable risk. But seaworthiness may have a different meaning according to the position or trade in which the vessel finds itself. If lying in port, seaworthiness means that the vessel is in proper condition to move about in the port for purposes of outfitting and loading. When departing on a voyage a different degree of seaworthiness is implied, viz., fitness in all respects to perform the voyage undertaken. If the voyage is subdivided into distinct parts, such as river, lake and ocean, the marine insurance concept of seaworthiness applies to each portion separately, and the vessel must be in a position to meet fully all the ordinary risks associated with every stage of the voyage. But where the hull policy is of the time variety, the warranty of seaworthiness does not attach, unless the owner knows of the vessel's unseaworthi-

ness and permits the same to continue in spite of opportunity to remove all shortcomings. As explained by Rush:[2]

> As regards a time policy on hulls, it is an old axiom that there is no warranty of seaworthiness in a time policy. This is because in a time policy a vessel is or may be out of the control of the owner at the time the policy may attach, and the owner may be, and frequently is, in entire ignorance of her physical condition at that time.

Term or Voyage — Deviation.— Hull insurance, as already indicated, may be written to cover either a specific voyage, from a given port of departure to a stipulated port of destination, or a stated period of time, such as one year from noon of January 1, 1919, to noon of January 1, 1920. In the great majority of instances vessels are insured under time policies and it is customary to specify either Greenwich or Washington time. Occasionally the policy may cover for a voyage and, say, thirty days thereafter in which case the term may be said to represent a combination of the two (voyage and time) types of policies.

It is customary in voyage policies to have the insurance commence "at and from" or "from" a particular place. This does not mean that the vessel must be at the designated place when the insurance is effected. It is understood, however, that the contract lapses if the voyage is not started at the indicated place of departure within a reasonable time, unless, of course, the underwriter agreed to the contrary, or it can be shown that the delay was due to unavoidable circumstances known to him prior to the conclusion of the contract. Avoidance of the policy will depend upon the unreasonableness of delay. As long as preparations for the voyage are *bona fide*, and clearly above any suspicion of wasting time, delay in starting the voyage will be excused. The prosecution of the voyage, following its commencement, or at the port of destination, must also be viewed in the same manner, and any unreasonable and inexcusable delay will avoid the policy. It should also be added that the insurance does not attach if the two termini of the voyage are incorrectly stated. If the vessel, for example, is insured for a voyage from New York to Liverpool, but the actual voyage undertaken is from Philadelphia to Liverpool, the insurance would never attach despite the fact that the hazard connected with the actual voy-

[2] Benjamin Rush, address on "Hull Marine Insurance" before the Insurance Society of New York, February 26, 1918.

age may be no greater, or even less, than that involved in the voyage described in the policy.

To prevent avoidance of the insurance in cases of impending difficulties, hull policies stipulate that "it shall be lawful for the insured vessel in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accidents without prejudice to this insurance." This section aims to prevent "change of voyage" and "deviation," either of which will avoid the policy. The first has reference to cases where the vessel begins the insured voyage but subsequently abandons the same for another voyage, while the latter contemplates all instances where there is a voluntary and unjustifiable departure from the course of travel prescribed by the contract. When assuming the risk, the underwriter had in mind the performance of the customary voyage in a regular and expeditious manner, and this fundamental condition is implied even though no definite reference may be made thereto in the contract of insurance. Unjustifiable deviation, involving an avoidance of the insurance, is held by the courts to comprise not only an unnecessary departure from the prescribed course of navigation, and, where not prescribed, the customary course, but also an unreasonable extension in the performance of the voyage. Owing to the drastic manner in which the courts have construed deviation, or change of voyage, it is customary for underwriters to agree, for an extra premium, to continue the insurance in force in the event of either taking place, or to grant insurance for a definite period of time.

Attention should also be directed to the wording of the policy which relates to the termination of the insurance. Thus in case of a time policy, if the vessel is on a voyage at the expiration of the term, the underwriter agrees upon written request received from the insured "on or before that time (but not otherwise)" to continue the insurance until noon of the day after arrival at the first port of discharge, or "if the vessel has no cargo on board, then until noon of the day after arrival at the first port at which the said vessel may arrive and be moored twenty-four hours in safety, and no longer, either on hull or freight, the assured paying *pro rata* monthly premium for each month entered upon." If the policy relates to a specific voyage, the

insurance continues only until the vessel has arrived and has been "moored twenty-four hours (or the number of days, if any, specified in port), counting from noon of the day of arrival."

The words "moored twenty-four hours in safety," or "in good safety" as some policies provide, render the underwriter liable for any loss which may have originated prior to the arrival of the vessel but which is completed after the vessel reaches port. Thus a vessel may be injured on the voyage, but may not sink until after arrival, in which case the vessel cannot be considered as being "moored twenty-four hours in good safety." Moored for the specified twenty-four hours is regarded as taking place in the port of discharge, and the vessel is presumed to be moored "(1) in such a state of physical safety that she can keep afloat while her cargo is being unloaded; (2) in such a state of political safety that she shall not have been subjected during the voyage to any embargo, seizure or capture on the part of the government of the port or of strangers; and (3) under such circumstances as to have had an opportunity of unloading and / or discharging."[3]

Numerous special clauses are used to modify or amplify the aforementioned policy provisions. The insured, for example, may warrant the position of sailing in some such form as "warranted in port on .....," "warranted in safety on .....," "warranted to sail before .....," or "warranted moored in good safety in the harbor of ....." Or the risk may be made "to commence on expiry of previous policies." A time policy may contain a so-called thirty-day clause which customarily reads: "And while there until expiry of thirty days after arrival, or until sailing on next voyage, whichever may first occur." If a term policy expires on a voyage the insured may have liberty to renew the policy "for one, two, or three months, at the same rate of premium, if application be made to the company on or before the expiration of the first term, the risk, however, to terminate at any port at which she may first arrive during the said extended time, on her being moored therein twenty-four hours in good safety; a *pro rata* premium to be returned for each entire month of the extended time, there being no loss for other claims made."

[3] Benjamin Rush, address on "Hull Marine Insurance," before the Insurance Society of New York, February 26, 1918.

Deviation beyond the limits named in the policy may be declared by a special clause as not rendering the contract void, although no liability shall exist during such deviation. Again, the vessel may be allowed "to proceed and sail to and touch and stay at any ports or places whatsoever or wheresoever without prejudice to this insurance." Still other clauses may take some such form as "privilege given to use the port of ..... without extra charge"; "with leave to call at any intermediate ports and places for all purposes"; and "this policy not to be vitiated by any unintentional error in description of voyage or interest, or by deviation provided the same be communicated to the insurers as soon as known to the insured, and an additional premium paid if required."

Valuation.— Valuation of a vessel for insurance purposes presents a number of important problems. Manifestly the insured should be fully protected, and yet the valuation should not be such as will cause an inducement to bring about the destruction of the vessel. Value, it is apparent, is also changeable since it is based on such factors as the prevailing level of freight rates and the cost of reproduction at the time the insurance is negotiated. Even during the lifetime of the policy these factors may change so greatly as to alter the value sufficiently to create a moral hazard.

As compared with merchandise, the value of vessels is much more difficult to prove, and chiefly for this reason hull insurance is nearly always written on the valued principle. Valued policies, as previously explained, specify an agreed value of the subject matter insured, and, in the absence of misrepresentation or other fraud, this valuation is final and binding. Both insured and underwriter are thus secured against any dispute arising with respect to the vessel's value in case of loss. But it is highly important to the underwriter, who grants full insurance, covering general average and particular average losses, as well as total loss, that the valuation expressed in the policy should be reasonably high. Such losses are determined on a percentage basis in relation to the total value insured. It is for this reason that the insured is usually required to agree that only a designated percentage of the vessel's full value shall be covered by policies limited in their coverage.

Average Clauses Relating to Hull Insurance.— As was the case in cargo insurance, hull policies contain a variety of clauses which limit the underwriter's liability with respect to partial losses. Most frequently a minimum franchise of three or five per cent, or a definitely stipulated sum, is used and this minimum is applied "on each valuation separately or on the whole." The wording customarily used is as follows:

> This policy is warranted free from particular average under 3 per cent, or unless amounting to (here follows some figure like $2,000 or $5,000), but nevertheless when the vessel shall have been stranded, sunk, on fire or in collision with any other vessel, underwriter shall pay the damage occasioned thereby, and the expense of sighting the bar after stranding shall be paid, if reasonably incurred even if no damage be found.
>
> Average payable on each valuation separately or on the whole, without deduction of thirds, new for old, whether the average be particular or general.

Separate valuations, such as on the hull, fittings, and machinery, or the stipulation of a definite sum instead of a percentage, are resorted to because valuations often reach such large proportions that the application of a definite percentage to the total value would involve an unreasonably heavy burden on vessel owners before the underwriter's liability would attach. Applied to an illustration the aforementioned clause, calling for average "on each valuation separately or on the whole" would operate as follows if the franchise was fixed at "three per cent, or unless amounting to $5,000." Suppose that the hull and machinery of a steamer are valued separately for insurance purposes at $400,000 and $200,000 respectively, and that a casualty, other than one of the four enumerated in the clause, causes a loss to the hull of $2,000 and to the machinery of $7,000. In the absence of separate valuations and a minimum franchise of $5,000, there would be no liability on the underwriter, since three per cent on the total value of $600,000 would be $18,000, or much in excess of the loss of $9,000. But with separate valuations, the underwriter would be responsible for the $7,000 loss on machinery, since this amount exceeds the three per cent on the valuation of $200,000, or $6,000. On the hull, if there were only a three per cent franchise, there would be no liability, since three per cent of $400,000 is $12,000, as compared with a loss of only $2,000. Here, however, the underwriter is made

liable by the minimum franchise of only $5,000, since the adjustment is based "on the whole" value, and the loss on this value is $9,000. It should be added that the underwriter is responsible for the entire loss if the same reaches the minimum franchise provided for, but no general average loss and no expenses incidental to ascertaining and proving the loss may be added to the particular average losses in order to make up the specified franchise. Successive losses occurring at different times on the same voyage, however, can be combined to make the three per cent or other figure stipulated in the policy.

Vessel owners, however, may seek to obtain their insurance at the best possible terms, and may thus be willing to assume all partial losses themselves up to a certain amount. They will therefore want their vessels insured under a "deductible average clause." Such clauses are very common in hull insurance and the franchise will vary according to the character of the vessel. Thus in Lake Hull policies the clause states that the insurance is warranted free from particular average under three per cent, unless the vessel be stranded, sunk, burnt, or in collision, or the damage be caused by contact with any substance other than water, "but in the event of any claim under this policy (other than claim for total loss or constructive total loss) the assurers to pay only the *excess of $500 on each accident.*" In the case of very valuable ocean liners, however, the deductible franchise may be placed as high as several hundred thousand dollars. Manifestly the underwriter's liability is greatly reduced under the deductible principle (particularly where the franchise is high), since it is limited only to the excess over and above the franchise. A high franchise, under a deductible plan, is often used as a special inducement to get underwriters to accept large lines of insurance, whereas otherwise the available insurance market might prove insufficient to absorb whole risks involving millions.

"Deduction of Thirds, New for Old."— The average clause, as already noted, contains the words "average payable on each valuation separately or on the whole, *without deduction of thirds, new for old,* whether the average be particular or general." This wording directs attention to the practice, almost universally applied when wooden vessels were the means of

conveyance by water, of deducting one-third from the total expense (including both labor and materials) involved in repairing a damaged vessel, and of fixing the underwriter's liability at the remaining two-thirds. The practice was based on the principle that the substitution of the new for old materials would benefit the vessel owner, unless the vessel was comparatively new, at the expense of the underwriter. To avoid a detailed ascertainment of the exact facts in every case, it was found convenient to apply some general rule whereby a certain allowance, like a one-third deduction, was adopted as a measure of the improvement of the vessel resulting from the substitution of new materials for the old.

But while the use of such a rule may have been feasible in the days of wooden vessels, the justice of applying such a general principle to modern iron and steel steamers may well be doubted. Unquestionably severe hardship will often result to the owner, especially where the vessel is comparatively new or of such a character as not to be subject to rapid depreciation. Modifications of the old rule have therefore been introduced by the Association of Average Adjusters, and to-day the deductions range all the way from nothing on the iron work of the vessel to one-third on certain fittings. Most hull policies contain a clause which provides for no deduction to compensate for wear and tear, thus necessitating a sale of the old materials and a crediting of the proceeds of the sale against the cost of the new repairs. Many other modifications of the original rule have been made, each with the purpose of making the deductions correspond as nearly as possible to the actual facts. In some instances the deductions are arranged according to a sliding scale, the amount increasing gradually as the age of the vessel, or the portion thereof under consideration, increases. Even in the case of wooden sailing vessels the "thirds off" clause is modified to-day with respect to anchors, chains, sheathing or other metal portions.

"Inchmaree Clause."— Much uncertainty existed for many years as to the underwriters' liability for loss occasioned by the bursting of boilers or the occurrence of accidents to the machinery. On first thought it might seem that such losses are covered by the terminal clause relating to marine perils, viz., "and all

other perils, losses, and misfortunes, that have or shall come to the hurt, detriment or damage of the said vessel, or any part thereof." Judgment in the matter was rendered by the House of Lords in the famous case of the Steamer *Inchmaree*,[4] from which the aforementioned clause derived its name. According to the facts of this case, the vessel was insured under an ordinary time policy. A donkey engine used to pump water into the vessel's boilers had had one of its valves closed, negligently or accidentally, with the result that the water passed into and split the air chamber of the donkey-pump, instead of flowing into the boilers. The judgment of the lower courts was adverse to the underwriter, but the House of Lords reversed that judgment and held that such losses were not covered by the ordinary marine policy, since they could not be regarded as being the result of a "peril of the sea," or as being covered by the general expression, "all other perils, losses, etc.," these words referring only to causes similar in nature to perils of the sea.

Following this judgment, a so-called Inchmaree clause[5] was designed for hull policies, and is now used generally in contracts insuring mechanically propelled vessels. As a result a new and important group of new perils has been added to the already imposing list found in the ordinary marine contract, and their seriousness to underwriters lies chiefly in the fact that many of the claims are traceable to a lack of knowledge on the part of those handling the machinery. It should be noted that the clause covers "loss or damage to hull or machinery through the negligence of masters, charterers, mariners, engineers, or pilots," as well as "through *any latent defect* in the machinery, or hull." The clause also protects against loss or damage to hull and machinery through explosion, bursting of boilers and breaking of shafts. No liability is assumed, however, if the loss or

[4] Thames and Mersey Marine Insurance Co., Ltd. v. Hamilton, Fraser and Co., (1887) VI. Asp. M. L. C., 200.

[5] "This insurance also specially to cover (subject to the free of average warranty) loss of, or damage to hull or machinery, through the negligence of master, charterers, mariners, engineers, or pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the owners of the ship, or any of them, or by the managers. Masters, mates, engineers, pilots, or crew not to be considered as part owners within the meaning of this clause should they hold shares in the steamer."

damage is due to want of diligence by the owners of the vessel, or by the manager, but it should be especially noted, that masters, mates, engineers, pilot or crews, whose negligence is covered by the clause, are not to be considered as part owners within the meaning of the clause even though they hold shares in the steamer. Sometimes clauses are used which especially single out the explosion hazard, and provide that "the risks covered by this policy are to include loss, damage or expense resulting from explosion howsoever or wheresoever occurring."

Where machinery claims show a tendency to average unusually high, as in the case of auxiliary sailing vessels, special restrictions may be placed upon the assumption of this type of loss with a view to overcoming the hazard connected with minor accidents or with the inexperience of engineers. Thus a deductible average clause might be used which limits the underwriters' liability for partial loss to machinery only to "the excess of ten per cent upon the insured value of the machinery in respect of each accident." A more drastic limitation, and one later in date of development, confines liability for machinery losses only to accidents where caused "by stranding, sinking, burning or collision with another vessel." A still greater limitation, and the most recent one to be used, is expressed in the following clause: "Free from particular average on machinery and everything connected therewith unless caused by stranding, sinking, burning or collision *and from all such claims there shall be deducted ten per cent of the valuation herein of the machinery.*" Numerous other clauses impose limitations of one kind or another upon the assumption of loss from damage to machinery. One clause exempts the underwriter from responsibility for injury, derangement or breakage of machinery, or bursting of boilers, unless occasioned by stranding or fire. Other leading clauses exempt the underwriter from loss to "refrigerating machinery and insulation appertaining thereto, unless expressly included in this policy or unless the property of the owners of the vessel," or declare that "donkey boilers, winches, cranes, windlasses, steering gear and electric light apparatus shall be deemed to be part of the hull and not part of the machinery."

Collision Clause.— This clause first came into general use after 1836, in which year it was decided by a British court that

an underwriter was not liable for damage caused by the insured vessel to another vessel through collision, even though the insured vessel was at fault. Hence, although the damage suffered by the insured vessel through collision was covered by a marine policy, it became necessary, in view of this decision, to make a separate contract whereby the underwriter would agree to assume liability for the damage caused to the other vessel.[6] Accordingly it became the general rule to insert a so-called "collision" or "running down" clause which makes the insurer liable for all or a portion of the legal damage thus incurred. The use of such a clause has become well-nigh universal, and, in respect to space occupied, represents approximately a fifth of the entire hull contract. Using the clause contained in the "American Hull Policy 1917 Form" for illustrative purposes, eight separate ideas are presented, viz.:

(1) If the insured or charterers, in consequence of a collision of their vessel with another vessel, shall be or become liable to pay any sum not exceeding in respect of any one collision the value of the ship insured, the underwriter will pay them such proportion of the sum paid as their subscriptions bear to the value of the insured vessel.

(2) Where the liability of the vessel has been contested with the consent in writing of a majority (in amount) of the underwriters on hull and / or machinery, the underwriters will pay a like proportion of the costs thus incurred or paid.

(3) When both vessels are to blame, "then, unless the liability of the owners or charterers of one or both of such vessels become limited by law, claims under the collision clause shall be settled on the principle of *cross-liability* as if the owners or charterers of each vessel had been compelled to pay the owners or charterers of the other of such vessels such one-half or other proportion of the loss damages as may have been properly allowed in ascertaining the balance or sum payable by or to the

[6] In England such liability is limited to eight pounds Sterling per gross ton for property damaged and to seven pounds Sterling per ton additional in case of personal injury or loss of life. In the United States, however, such liability is permitted by law to be limited to actual value (following the collision) of the vessel at fault, plus the freight for the particular voyage. Therefore, should this value exceed the claim for damages, the owner will keep the vessel; but should the claim exceed the value, the vessel will probably be abandoned.

assured or charterers in consequence of such collision." The insertion of the principle of "cross-liabilities" in the collision clause has been comparatively recent. Its purpose is to meet court decisions which have adopted the plan of apportioning the blame on each vessel and then have one of the vessels pay any excess balance to the other, thus bringing about a payment by the underwriters to only one vessel.

(4) The aforementioned principles are made to apply to cases where both vessels are the property, in part or in whole, of the same owners or charterers.

(5) Questions of responsibility and also of liability as between the two vessels are left to the decision of a single arbitrator if the parties can agree to that effect. Otherwise, these matters are left to the decision of three arbitrators, one appointed by the managing owners or charterers of both vessels, one by the majority (in amount) of underwriters interested in each vessel, and a third to be selected by the other two before entering upon a settlement of the case. The decision of the single arbitrator, or of any two of the three arbitrators, is final and binding.

(6) Liability does not extend to any sum which the insured or charterers may pay or become liable to pay with respect to the removal of obstructions under statutory powers, or for injury to harbors, wharves, piers, stages and similar structures, resulting from such collision.

(7) Liability, likewise, does not exist with respect to the cargo or engagements of the insured vessel, or loss of life, or personal injury.

(8) In the event of any claim being made by charterers under the clause, they are not entitled to recover in respect of any liability to which the owners of the vessel, if interested in the policy at the time of the collision, would not be subject, nor to a greater extent than the vessel owners would be entitled in such event to recover.

A further agreement, immediately following the collision clause, provides that in the event of salvage, towage, or other assistance being rendered to the insured vessel by any vessel belonging partly or wholly to the same owners or charterers, the value of such services is to be ascertained by arbitrators in the

same manner as is provided for under the collision clause, and without regard to the common ownership of the vessels. The amount awarded is declared to constitute a charge under the policy so far as applicable to the interest insured.

Formerly it was the custom, and is so to-day in the case of wooden sailing vessels, to have the collision clause cover only three-fourths of collision liability, the owner assuming the remaining fourth on the theory that such self interest would assure more careful navigation. Vessel owners may, however, desire to cover this unprotected portion, or where a full collision clause is used, liability for loss of life, personal injury, damage to harbors, docks, etc., and other forms of excepted damage. Such protection may be obtained under the so-called "P. and I." or Protection and Indemnity Clause.

"Disbursements Warranty."—Another clause occupying considerable space in hull policies is the so-called Disbursements Warranty.[7] Its purpose is to make the insured take out an amount of "full form insurance" (covering total, general average and particular average and salvage charges) to such an extent "that the amount insured for account of the assured and / or their managers on disbursements, commissions, and / or similar interests 'policy proof of interest' or 'full interest

[7] The clause, incorporated in the American Hull policy, 1917 Form, reads as follows: Warranted that the amount insured for account of the Assured and / or their managers on Disbursements, Commissions or similar interests "policy proof of interest" or "full interest admitted" or on excess or increased value of hull or machinery however described shall not, except as indicated below, exceed 15% of the insured valuation of the Vessel, but the assured may in addition thereto effect "policy proof of interest" or "full interest admitted" insurance on any of the following interests:

Premiums (reducing or not reducing monthly) to any amount actually at risk, and Freight and / or Chartered Freight and / or Anticipated Freight and / or Earnings and / or Hire or Profits on Time Charter and / or Charter for series of voyages for any amount not exceeding in the aggregate 25% of the insured valuation of the vessel; and if the actual amount at risk on any or all of such interests shall exceed such 25% of the insured valuation of the Vessel, the Assured and / or their managers may, without prejudice to this warranty, insure whilst at risk the excess of such interests reducing as earned.

Provided always that a breach of this warranty shall not afford underwriters any defense to a claim by mortgagees or other third parties who may have accepted this policy without notice of such breach of warranty, nor shall it restrict the right of the Assured and / or their managers to insure in addition General Average and / or Salvage Disbursements whilst at risk.

admitted' or on excess of increased value of hull or machinery however described shall not, except as indicated below, exceed fifteen per cent of the insured valuation of the vessel, but the assured may in addition thereto effect 'policy proof of interest' or 'full interest admitted' insurance on any of the following interests, etc."

Were it not for this clause the insured would be tempted to cover an excessive portion of the value of the vessel with insurance under "policy proof of interest" conditions, owing to the lower rates charged for such insurance as compared with "full form" policies. The P. P. I. (policy proof of interest) and F. I. A. (full interest admitted) provisions are inserted to indicate that the underwriter fully admits the interest and that the policy itself is sufficient evidence of proof. Their insertion does not mean that the interests are unreal, but simply that their proof through documentary evidence may be difficult, if not impossible.

Return of Premium — Cancellation and Lay-up Privileges.— Marine insurance premiums are considered earned as soon as the policy attaches, although the underwriter's risk may subsequently cease or be reduced. With respect to hull policies, usually written for a year, this legal principle may often work a real hardship. A vessel, for example, may be sold during the currency of the policy, thus relieving the underwriter of all risk during the balance of the term. Or the vessel may be lost through some peril not covered by the policy, and the underwriter be relieved of a considerable portion of the risk as originally assumed. Unexpected events may also require the vessel to be laid-up for a long stretch of time to undergo necessary repairs.

Circumstances, like the foregoing, indicate the reasonableness of adjusting the premium as is done in fire insurance. It is, therefore, becoming customary in hull insurance to permit cancellation on the basis of a return of premium at a fixed rate for each uncommenced month, and also to rebate a portion of the premium for each fifteen or thirty days during which the vessel is obliged to be laid-up. But such lay-up must be due to the inability of the vessel to operate, and not to mere unemployment or absence of traffic. Formerly, it was the practice not to allow any return in case of lay-up where the underwriter was assuming the cost of repairs, and this is still the practice on the Great

Lakes where the policy usually reads "to return ..... per cent net, *if not under average,* for every fifteen consecutive days the vessel may be laid-up in port, or in dock, during navigating period, stipulating in this policy during such lay-up, the vessel being at the risk of the underwriter at arrival." Most frequently, however, the Return Premium Clause offers "to return ..... per cent for every thirty (sometimes fifteen) consecutive days the vessel may be laid-up in port, or in dock, during such period the vessel being at the risk of the underwriters." This last clause takes account of the fact that the premium was originally charged for the risks of navigation, and that the hazard is materially less during the period of lay-up.

Other Hull Clauses.— Under this heading, as in the case of cargo insurance, there may be grouped the many scattered clauses and warranties found in examining a large number of policies. To enumerate all such clauses, not already referred to in this chapter, is quite impossible. An attempt will therefore be made to indicate their nature by giving six principal groups under which they may be classified:

(1) Trading Warranties ranging all the way from those which permit the vessel to navigate on all waters without restriction to those which limit the vessel's use to a limited area. In the latter case the policy is generally "warranted confined to waters ..... and tributary thereto," or the navigable area is specifically designated as "New York harbor to include upper and lower New York Bays, inside a line drawn from Sandy Hook to Norton's Point, North River as far as Piermont, East River as far as Throggs Neck, and tributary inland waters, and the adjacent inland waters of New Jersey." Similar clauses define the limits of Long Island Sound, Chesapeake Bay, Philadelphia Harbor, etc. The frequently used American or London Institute Warranties exclude certain waters in Northern or Arctic regions unless, with few exceptions, an extra premium is paid. Other warranties prohibit the carriage of certain cargo within certain months, or forbid navigation altogether on certain waters during a portion of the year. Of the latter class the restrictions on the Great Lakes traffic are probably the best example, sailing dates being limited to metal vessels between April 15th and December 1st, and for wooden vessels between

May 1st and November 15th. But these restrictions are again subject to removal by special agreements conditioned upon an extra premium. A further so-called "Winter Moorings Clause" provides that Great Lakes vessels must be moored under conditions which meet with the underwriters' approval.

Limitations, like the foregoing, are strictly enforced, and any usage to the contrary is not regarded as invalidating a plain statement in the policy. Many vessels are built and are suitable only for a particular trade, and if used elsewhere will invite serious losses. Manifestly the underwriter cannot assume such special hazards at ordinary rates. If the policy has once attached on the basis of a rate which is meant to cover only ordinary risks of navigation, it would be most unreasonable to permit the vessel to undertake the navigation of waters for which it is unsuited.

(2) Loading Warranties, which limit or prohibit the loading of certain heavy or otherwise hazardous articles. The most widely known clause of this character warrants the vessel "not to be loaded in excess of her registered tonnage with either lead, marble, stone, coal or iron; also warranted not to be loaded with lime under deck; and if loading with grain, warranted to be loaded under the inspection of the surveyor of the Board of Underwriters, and his certificates as to the proper loading and seaworthiness obtained." Other clauses prevent loading of certain articles altogether, and may take some such form as "warranted not to load or carry crude petroleum, naphtha, benzine or gasoline."

(3) Clauses extending the underwriter's liability to special risks. Any or all of the numerous war risks may thus be definitely assumed by the underwriter upon the payment of an adequate premium. Privilege may be given to lay-up the vessel for purposes of making additions, alterations and repairs, and to go in dry-dock. Leave may be given to sail with or without pilots, to tow or to be towed, and to assist vessels in all situations and to any extent, and to go on trial trips. The underwriter may also assume all risks of negligence, default or error in judgment of all parties with respect to navigation.

(4) Clauses exempting the underwriter from the payment of certain losses and expenses. The so-called "Time Clause," for

example, warrants the policy free from any claim consequent upon loss of time. Exemption from liability for contribution for jettison of deck load is also common; and frequent use is made of a clause which warrants the insurance free from claim in consequence of any prohibition, restriction or embargo enforced by the Government, or of any violation or attempted violation thereof. Special average clauses are also designed to protect the underwriter against grounding in the Panama, Suez and Manchester canals or in certain designated rivers or ports; or to exclude unrepaired damage in addition to a subsequent total loss sustained during the term covered by the policy.

(5) Clauses waiving important marine insurance principles in the interest of the insured. Leading examples of this kind are agreements which fully admit insurable interest, which make the policy proof of interest, which acknowledge the seaworthiness of the vessel, or which declare the insurance binding in case of deviation or change of voyage or of any omission or error in the description of the interest, vessel or voyage.

(6) Clauses relating to matters connected with valuation and adjustment. Thus the insurance company may require that proofs of loss and all bills for expenses must be approved by it, that the company have a voice in the selection of members of all boards of survey, and that notice shall be given the company, where practicable, prior to any survey, so that it may appoint its own surveyor, if it so desires. Constructive total loss is sometimes carefully defined with reference to the extent of expenditures before it may be assumed to exist. With respect to other losses it may be agreed that all sums paid under the policy shall reduce it by the amounts so paid, and that the policy will not be in force for the original amount unless restored by the payment of a new premium.

REFERENCES

Gow, WILLIAM: *Marine Insurance: A Hand Book.*
Chap. XV: "Liabilities."

RUSH, BENJAMIN: *Marine (Hull) Insurance.*
Address before the Insurance Society of New York, 1918.

WINTER, W. D.: *Marine Insurance: Its Principles and Practice.*
Chap. XIII: "Hull Insurance."
XIV: "Special Policy Forms for the Insurance of Hulls."

CHAPTER XII

FREIGHT INSURANCE

Character of the Freight Interest.— This branch of the marine insurance business relates to the third most important interest in maritime ventures. In this country the word "freight" is customarily used to refer to the cargo itself, but in marine insurance it is important, to avoid confusion, to bear in mind that the term has reference to "money payable either for the hire of a vessel or for the conveyance of cargo from one port to another."[1]

Unlike cargo and hull interests, the freight interest is an intangible one, which grows out of the contract defining the relation between the owner or charterer of a vessel and the owner of the goods delivered for shipment. As Templeman explains: "It is apparent that freight of itself is not capable of sustaining actual, i. e., physical, depreciation by perils insured against in the same way as a vessel or goods. To constitute a particular average on freight, therefore, there must be a partial loss in respect of it."[2] The intangible character of the interest is probably responsible for most of the difficulty encountered by the average student in understanding this apparently mysterious branch of the marine insurance business. But a further element of confusion arises from the varying terms contained in the numerous contracts of affreightment which give rise to the freight interest. These contracts differ widely as to the time of payment of freight money and other obligations imposed upon the parties thereto, and often bring about a situation whereby some risks connected with the freight interest are borne by one of the parties, while other hazards are at the risk of the other party. Since the agreement between the owner or charterer of the vessel and the owner of the goods to be shipped by the vessel contains the fundamental conditions upon which the freight interest is based, it follows that the employment of a variety of

[1] Templeman, Frederick: *Marine Insurance*, 77.
[2] Templeman, Frederick: *Marine Insurance*, 77-78.

such contract forms will necessitate a corresponding variance in the conditions governing the freight insurance.

Rules Defining the Time When Freight is Considered Earned.— Most foreign nations follow the principle of allowing payment of so-called "*pro rata*" or "distance" freight, i. e., freight proportionate to the mileage of the voyage actually performed. In other words, if causes beyond the control of the owner or charterer of a vessel make the completion of the voyage impossible, freight will be allowed to said owner or charterer for the portion of the contract actually fulfilled. In some cases even full freight is allowed.

In England and the United States, however, the common law does not recognize this principle of "distance" freight. Payment of freight, in the absence of special agreement to the contrary, is conditioned upon the full completion of the contract of carriage, and no compensation is due for a partial completion of the voyage. And this is true even though the failure to bring the goods to destination is due to circumstances beyond the control of the owner or charterer of the vessel or his representatives. Templeman states the principle as follows: "English law recognizes no payment of freight for the partial performance of the voyage, known as *pro rata* or distance freight. If owing to perils of the sea, the ship owner is prevented from delivering the cargo at the port of destination, he cannot require the merchant to pay anything for the portion of the voyage which the vessel has performed."[3]

The hardship to vessel owners resulting from the application of this principle may be at times very great. Thus let us assume the shipment of a cargo from New York to Buenos Aires, and the voyage terminating at Rio Janeiro for reasons over which the owner of the vessel had no control. Owing to the failure of the owner or charterer to complete his part of the contract, the cargo owner is under no obligation to pay any part of the agreed freight money. Yet the vessel owner or charterer, it is clear, will have incurred by far the largest part of the total expenses involved in completing the contemplated voyage, such as wages, fuel, food and other provisions. These expenses must be met despite the fact that the vessel

[3] Templeman, Frederick: *Marine Insurance*, 78-79.

owner or charterer will receive no return whatever and will also lose all his profit, or the "net freight" as it is customarily called. Clearly the vessel owner or charterer should have an insurable interest in the freight so as to entitle him to secure protection against the contingency of losing on the expenses incurred in case of failure to earn his freight owing to some unavoidable peril. If the nature of the goods permits, the owner or charterer might seek to have them forwarded to the agreed destination by some other vessel. But such forwarding may, again, involve an expenditure so large as to result in a loss to the vessel owner or charterer. Clearly, the owner or charterer should be entitled to effect insurance which will reimburse him for the loss incurred in endeavoring, by forwarding, to complete his contract of affreightment.

But while the common law does not recognize payment for a partial performance of the voyage, it does not follow that an arrangement to that effect cannot be provided for by express agreement between vessel and cargo owners. It may be arranged by agreement that the owner of the cargo may obtain the same at a port short of destination upon payment of an agreed amount of freight for the completed portion of the voyage. This practice is often advantageous in that there is an immediate release of the goods, whereas otherwise the vessel owner or charterer is entitled to hold the same for a reasonable time to enable him to earn his freight by making arrangements for the forwarding of the cargo to the agreed destination. Manifestly the vessel owner's or charterer's right to the goods for a reasonable period ought not to be questioned; otherwise the cargo owner would possess an unfair advantage in that he could take the goods at a place but slightly distant from the final destination and deprive the vessel owner or charterer of all opportunity to earn any freight whatever. Upon payment of an agreed amount, however, it might be arranged to have the vessel owner waive his right to hold the goods for a reasonable time, thus bringing about their immediate release and avoiding the loss of time connected with their forwarding.

It is also common for shipowners to demand payment of freight in advance, bills of lading often containing such words as "freight prepaid will not be returned, goods lost or not

lost" and "full freight is payable on damaged or unsound goods." "Prepaid" or "guaranteed freight" contracts simply provide for the payment of freight in instances where the goods are not delivered as per the terms of the contract, owing to circumstances over which the vessel owner or charterer, or his representative has no control. Of course, under such arrangements the vessel owner or charterer no longer possesses an insurable interest in the freight. No risk of losing it exists any longer since the vessel owner, if he has the freight in hand, is relieved of any liability to refund any part in the event of failure to complete the voyage; or, if the freight is not actually paid, the terms of the contract nevertheless make the freight payable irrespective of the completion of the voyage. The risk of loss attaches solely to the merchant (or other person) who has prepaid the freight, and who may insure it as advanced freight, or include it in the value of the cargo and cover it by his cargo insurance.

But it is important that the prepaid or guaranteed character of the freight must be specifically set forth in the contract. Mere prepayment of the freight without stipulating that such prepayment involves retention, irrespective of the successful performance of the voyage, will leave the vessel owner or charterer obligated to a return of the freight in the event that the voyage is not fully completed as per the terms of the contract of affreightment. Most writers on the subject, it may be added, regard prepaid or guaranteed freight contracts as wrong in principle, on the ground that they not only reduce the vessel owner's incentive to prosecute the voyage with utmost diligence, but tend to lessen his endeavors, in the event of marine disaster, to forward the goods to ultimate destination. Such agreements, it is argued, have generally had their widest use during periods of tonnage stringency. When the demand for vessels greatly exceeds the supply, vessel owners are enabled to enforce arrangements upon cargo owners for the prepayment of freight to which the latter would be sure to object if competitive conditions existed.

Other Insurable Interests.— The conditions governing freight insurance are usually determined by one of two kinds of freight agreements, viz., "charter parties" and "bills of lading."

The first type of agreement — the charter party — relates to the hire of a vessel by its owner to some operator or merchant (known as the charterer) either for a particular voyage or for a prescribed period of time, and at an agreed compensation. All sorts of variations may exist in the terms of the agreement. Besides agreeing to operate the vessel as per the agreement, the charterer usually binds himself to keep the vessel insured and, at the termination of the charter, to restore the vessel to the owner in as good condition as it was when he originally received it. The compensation may be arranged for at a stipulated price per day, month, or year, or on the basis of a certain amount per ton or some other unit of measure. As already noted, the charterer has an insurable interest in the charter money which he has agreed to pay. Moreover, if the vessel has been rechartered to some one else, the original charterer may possess an insurable interest in any profits growing out of the transaction.

But the charter party may provide that, where the compensation for hire is not on a daily or other periodic basis, payment of the same shall cease altogether in case the vessel is lost, or for such time as the vessel may be unfit for use. Under such circumstances the vessel owner also possesses an insurable interest in the charter money. Although the charterer has assumed responsibility for the loss of the hull, the owner is vitally concerned with the continued navigable condition of the vessel, since in the absence of such condition there will be, according to the charter party, a discontinuance in the payment of the charter money. It therefore follows that the owner of the vessel possesses an insurable interest in the charter money and has the right to protect the same against marine perils which may so disable the vessel as to bring about a cessation of payment.

As contrasted with a charter party, there is the bill of lading freight agreement. This is used in cases where the vessel carries cargo belonging to shippers other than the owner or charterer. It constitutes the agreement between the vessel owner or charterer and the merchant whose cargo is conveyed, and sets forth the freight rate and other conditions of carriage. The earnings of the vessel in that case will be the total of the various bills of lading freight, and as already pointed out the vessel owner or

charterer, as may happen to be the case, has an insurable interest to the extent of this gross freight where the terms of the bills of lading are such as to deprive him of the freight in the event of the goods not being carried to destination, or, if they reach the stipulated destination, of being so changed through damage as no longer to exist in specie. Mere damage of goods, however, without changing their character, will not absolve their owner from paying the freight, provided the vessel owner or charterer has not been responsible for the damage. Since the freight is collectible if the goods arrive in specie at the port of destination, it follows that the cost of the same includes the freight which must be paid. Here, it will be observed, that the cargo owner assumes a contingency risk which goes under the name of "freight contingency" or "collectible freight." The insurance covering this contingency freight may be added to the insured value of the cargo and both interests be covered under the same policy. Then, in the event of loss, the underwriter's liability may be determined by applying the percentage of loss to the goods to both of the interests combined in the same policy, viz., the cargo insurance plus the freight contingency insurance. But while the two interests are combined in the same policy, it does not follow that the rate charged is the same. Owing to the smaller hazard involved, the cargo owner's rate on the freight contingency is considerably less than the rate on the cargo.

"Dead," "Future" and "Anticipated" Freight.— Certain special considerations present themselves in connection with so-called "dead freight," "future freight," and "anticipated freight." The first of these terms has reference to instances where ship space has been engaged by a merchant, but where subsequently the shipment cannot be made for some reason and where, owing to inability of the vessel owner or merchant to secure substitute cargo, the latter becomes liable to pay for the unused space originally contracted for. Under such circumstances the merchant is said to pay "dead freight" for unused space. The vessel owner, however, is required to use his best efforts to obtain substitute cargo, with a view to reducing the merchant's liability as much as possible. Should the vessel owner find it necessary to quote a lower rate in order to obtain cargo

for the dead space, the merchant will be liable only for the difference between the freight obtained and the freight promised under the contract. Whatever the dead freight may be, it cannot be regarded as an insurable interest, since from the standpoint of the merchant the loss has occurred before the voyage commences, while from the vessel owner's standpoint the right to obtain such payment is in no way dependent upon the completion of the voyage.

The second term — "future freight" — refers to instances where a definite contract is entered into for the conveyance of cargo at some future time. Thus the owner of a vessel lying at the port of New York may contract for a return cargo from Liverpool to New York, for a total of $25,000 of freight. Here an insurable freight interest exists, provided the contract is definite, since the earning of the stipulated sum on the future trip depends upon the continued existence of the vessel. Mere expectation of obtaining the cargo in question, however, without actually closing a contract, does not constitute an insurable interest in the absence of an agreement to this effect. "Anticipated freight" — i. e., where the obtaining of freight may be reasonably expected — may, however, be insured by agreement. The policy will usually cover total loss only and will be issued on the basis of "policy proof of interest" and "full interest admitted." This provision is necessary since the absence of a contract of affreightment (the freight being anticipated) will otherwise make it impossible to prove a definite insurable interest.

Leading Insurance Features.— In most respects the freight insurance policy is similar to other marine insurance contracts. Ordinarily the vessel owner's or charterer's interest commences when the vessel is ready to be loaded, and, where the vessel must proceed to a loading port, from the time the sailing in ballast commences. The policy may apply only to a voyage, or may be written on time, in which case the freight risk for an entire year may be covered as regards a single vessel or even for an entire fleet. Where the insurance pertains to a voyage, it continues until the contract of affreightment is completed or otherwise ended.

The amount covered is usually limited to a definite sum. For

purposes of valuing the freight, it is customary to use the freight list or amount of charter. In open policies the sum is declared from time to time as already explained for open or floating cargo policies. In ascertaining the amount insured, consideration is given to the gross bill of lading freight plus the cost of insurance. In other words, the bill of lading freight and the insurance cost is the only interest at risk, and any loss to the vessel owner because the freight actually realized is less than the charter freight, owing to inability to secure sufficient cargo or, if the cargo is full, an adequate freight rate, is not covered. Such loss, it is clear, is in no way connected with the successful performance of the voyage and therefore does not constitute a risk which properly falls within the scope of marine insurance.

Two expressions, frequently found in freight insurance policies—"on board or not on board" and "chartered or as if chartered"—also deserve a few words of explanation. The first expression must be viewed in relation to the policy wording which reads: "beginning the adventure upon the said goods and merchandises from and immediately following the loading thereof on board the said vessel, etc." The words "on board or not on board," when applied to freight, are presumably intended to convey the thought that the freight insurance may attach before the goods to which the freight interest pertains have actually been loaded aboard the vessel. The same phraseology may also be advantageously used when freight is insured for a round voyage where the vessel will call at way ports for the purpose of loading and discharging cargo.

The second expression "chartered or as if chartered," will serve the purpose of protecting vessel owners where the vessels are employed for the conveyance of their own property. Here these words would seem to indicate that, while the freight cannot be considered as charter freight, it is nevertheless protected as fully as though chartered freight were under consideration. Also in the case of future freight, the full expression "freight on board or not on board, chartered or as if chartered" would seem to cover a situation where the insurance is negotiated prior to the time that the future voyage, arranged for in a general way but not yet definitely chartered, is undertaken.

REFERENCES

LAZARUS, C. M.: *The Law Relating to Insurance of Freight.* London, 1915.
Chap. I: "Freight as the Subject of Insurance."
Chap. II: "Insurable Interest in Freight."
III: "Duration of the Risk Covered by the Policy."
IV: "Designation of the Subject Matter in the Policy."
V: "Losses under the Policy."
VI: "Adjustment, Valuation, Abandonment, Subrogation."

TEMPLEMAN, FREDERICK: *Marine Insurance: Its Principles and Practice.*
Pages 77-80: "Particular Average on Freight."

WINTER, W. D.: *Marine Insurance: Its Principles and Practice.*
Chap. XV: "Freight Insurance."

CHAPTER XIII

BUILDERS' RISK INSURANCE

Extent of.— This branch of marine insurance is comparatively recent, and probably represents the most important new development in the business. It relates to the risk connected with the construction and repairing of hulls, and for this reason is often classified as a branch of hull marine insurance. As yet the business has not assumed large proportions as far as American Companies are concerned, but there are indications that point to greater prominence in the near future. Returns from fifty-three American Companies for 1918,[1] showed that twelve transacted no business of this character; that six received one-half of one per cent of their marine premium income from this source; seven between one-half of one and one per cent; four between one and two per cent; six between two and three per cent; five between three and four per cent; four between four and five per cent; four between six and seven per cent; one between eight and nine per cent; three, ten per cent; and one, thirty-four per cent. Much the same situation is shown by the reports received from American branch offices of foreign admitted companies. But, as in the case of hull insurance, the practice of exporting insurance directly to the foreign market is also resorted to very largely in the case of builders' risk insurance.

General Nature of the Risk.— The nature of the risk covered differs so radically from the other ordinary types of marine insurance that it was found necessary to use an entirely different form of policy.[2] Strictly speaking, marine insurance covers property which is afloat. But as already noted, marine insurance is

[1] Made to the Committee's Questionnaire in the investigation of Marine Insurance by the Subcommittee on the Merchant Marine and Fisheries, House of Representatives, 66th Congress, 1st Session. A number of Companies expressed their inability to separate this class of business from their other business.

[2] For a sample copy of this policy, *see* Appendix X, 238.

reaching inland, and, as in the case of the warehouse to warehouse clause, is to that extent becoming transportation insurance. To a large extent builders' risk insurance represents another encroachment, since it protects the vessel before it takes to the water, and to this extent is essentially a "shore cover." All things considered, the policy in general use is exceedingly liberal in its wording and probably represents the nearest approach to full protection that can be found in the insurance market. During the war shipbuilding in this country was mostly conducted by the Government, and the risk was carried under a self-insurance arrangement. But with the coming of peace the business will in all probability revert back to private underwriters, and with the tremendous impetus given to shipbuilding in the United States during the last few years there is every reason to believe that this branch of the marine insurance business has a bright future before it.

Term of the Contract and Valuation of the Subject Matter.— Owing to the large size of modern steamers, builders' risk policies often involve very large amounts of insurance and run for long periods of time. The term of the contract begins from noon of a certain date (New York, Washington, Chicago, or some other time being specified) which is warranted by the insured to be the date of the laying of the keel, and extends until the vessel is delivered by the builders. Provision is made for the automatic extension of the insurance beyond the first year if the vessel should not be delivered within a specified time, such as twelve months from noon of the date on which the policy was issued. In such instances the only endorsement is one providing for the payment of an additional monthly premium for the further period at a certain agreed rate per annum. In consideration of such additional premium, receipt for which is attached to the contract, the policy is extended from noon of the date of expiration mentioned in the original policy until noon of the advanced date to which it is desired to extend the protection.

Quoting the policy, it covers "on hull, tackle, apparel, ordnance, munitions, artillery, engines, boilers, machinery, appurtenances, etc. (including plans, patterns, molds, etc.), bolts, and other furniture and fixtures, and all material building and

designed for ..... building at ....." The limit of the underwriter's liability is specified in the policy, and the vessel and other property are covered "for so much as concerns the assured, by agreement between the assured and assurers" and are valued at a stipulated amount. Leave to increase the insurance from time to time is permitted, but in such instances the valuation will increase accordingly. This matter is important in order to determine to what extent the insured is a co-insurer. In other words, the underwriter is willing, in case of loss, to assume only his own proportion, i. e., he will pay the loss only in the proportion that the insurance carried bears to the completed contract price of the vessel. Provision is also made to the effect that the policy is "to pay its proportion of all general average and salvage charges, partial or total losses, without the right of subrogation of any remaining value in said vessel, etc." Additional fire insurance may also be taken out by the insured, such insurance to contribute *pro rata* with the builders' risk policy in the payment of any loss or damage by fire to the property insured. But should the loss or damage be due to causes other than fire, such additional fire insurance is not to be regarded as a part of the insured value.

The Premium.— Premium charges apply from the date of the commencement of the policy, and are based on the total liability which the underwriter would incur if the completed vessel (but before it is actually delivered) should become a total loss. Mention has already been made of the practice of charging an additional monthly premium in case of failure to effect delivery of the vessel by an agreed time. But it may happen that the vessel will be completed at an earlier date. In that event the policy may be canceled, and the underwriter agrees to return a certain percentage of the premium for each uncommenced month canceled. But it is expressly provided that the return premium shall not exceed a certain stated amount, such as, for example, one-half of the premium for the original term of the policy. The importance of this provision is apparent when we consider the unprecedented rapidity with which vessels were turned out during the recent war. Frequently construction was completed within a third or a quarter of the usual time required, and if underwriters were entitled to receive only that

portion of the annual premium upon cancellation of the contract, their aggregate premium income would probably be so small as to render doubtful the payment of losses likely to occur.

Risks Applying Prior to Launching.—An analysis of the specific risks assumed under a builders' risk policy shows that they may be conveniently classified as relating either to the period before the launching is actually completed, or to the period after the vessel has taken the water and before it has been actually delivered to the owners. With reference to the first, the policy not only covers the perils ordinarily enumerated in a marine insurance contract, but greatly extends the underwriter's liability by providing that:

> This insurance is also to cover all risks, including fire, while under construction and / or fitting out, including materials in buildings, workshops, yards, and docks of the assured, or on quays, pontoons, craft, etc., and all risk while in transit to and from the works and / or the vessel wherever she may be lying, also all risks of loss or damage through collapse of supports or ways from any cause whatever, and all risks of launching and breakage of the ways.

The wording of this clause is certainly broad, and would seem to meet the situation in full as regards the construction of the vessel. But two further clauses extend the underwriter's liability to consequential losses resulting from accidents to the equipment necessary to construct and launch a vessel. The first of these provides that, in case of failure to launch, the underwriter shall bear all subsequent expenses incurred in completing the launching. The second covers the damage, while the vessel is being built or fitted out and either before or after launching, to hull, machinery, apparel, or furniture, caused by settling of the stocks, or failure or breakage of shores, blocking or staging, or of hoisting or other gear.

Risks Applying Subsequent to Launching.—After the vessel has taken the water the builders' risk policy extends its coverage to all risks connected with the trial trips, "loaded or otherwise, as often as required, and all risks whilst proceeding to and returning from the trial course." Any time during the currency of the policy the vessel is also permitted to proceed to and from any wet or dry-docks, harbors, ways, cradles, and pontoons. Naval vessels are permitted, in addition to the making of the trial trips, to fire their guns and torpedoes; but in the event of

loss or damage resulting to the vessel or its machinery from this act the underwriter will not be liable unless there "results a total loss of the vessel." Moreover, the contract also covers negligence, explosions, breakage, and latent defects in a comprehensively worded Inchmaree Clause.

Liberality is also shown to the insured in the exercise of certain privileges. Not only does the contract contain the ordinary "Sue and Labor Clause," but the insured is given "leave to sail with or without pilots, to tow and be towed, and to assist vessels and / or craft in all situations, and to any extent." Deviation is permitted subject to an additional premium to be arranged. Changes of interest in the vessel are declared not to affect the validity of the policy. Average claims are payable irrespective of percentage, and without deduction of one-third, whether the average be particular or general. In the event of salvage, towage, or any other assistance rendered to the insured vessel, or any vessel belonging in part or in whole to the same owners, the value of the service, regardless of the common ownership of the vessels, will nevertheless be paid, following the ascertainment by arbitration.

Property and Personal Damage Liability.— Thus far our discussion has referred to the underwriter's assumption of liability for loss or damage to the insured vessel. But another serious type of loss is the legal liability of the insured for payment of property or personal damages resulting from collision or otherwise. This risk the policy covers very fully in two important clauses, viz., the "Collision Clause" and the "Protection and Indemnity Clause."

The collision clause has already been fully discussed in the chapter on Hull Insurance. With reference to hull risks, however, the underwriter's liability does not, as a rule, extend to any sum which the owner or charterer may become liable to pay with respect to the removal of obstructions under statutory powers, or for injury to harbors, wharves, piers, stages and similar structures, resulting from collision. Nor does the underwriter's liability extend to damage to cargo, or to loss of life or personal injury. In builders' risk insurance, the clause is made to cover the first contingency; frequently an additional paragraph extends the underwriter's liability to loss of life and personal injury.

Five additional types of liability claims or special losses are assumed under the so-called "Protection and Indemnity Clause," a clause which is also found in many hull policies, but a detailed presentation of which has been deferred until this point because of its general use in builders' risk policies. All of these types of liability claims are again stated most comprehensively, and would seem to leave no loophole for evasion on the part of the underwriter. Stated in the order of their presentation in the policy, they are:

(1) "Loss of or damage to any other ship or boat or goods, merchandise, freight, or other things or interests whatsoever on board such other ship or boat caused proximately or otherwise by the ship insured in so far as the same is not covered by the running down clause set out above."

(2) "Loss of or damage to any goods, merchandise, freight, or other things or interests whatsoever other than aforesaid, whether on board the said steamship or not, which may arise from any cause whatever."

(3) "Loss of or damage to any harbor, dock (graving or otherwise), shipyard, way, gridiron, pontoon, pier, quay, jetty, stage, buoy, telegraph cable or other fixed or movable thing whatsoever, or to any goods or property in or on the same, however caused."

(4) "Any attempted or actual raising, removal, or destruction of the wreck of the insured ship, or the cargo thereof, or any neglect or failure to raise, remove, or destroy the same."

(5) Any sum for which the underwriter may become liable for causes not stated elsewhere in the policy, but which are recoverable from or undertaken by certain designated Associations,[3] this liability, however, not to include loss of life and personal injury.

With reference to any of the foregoing matters, the underwriter agrees to assume any sum paid by the insured "in respect of any responsibility, claim, demand, damages, and / or expenses arising from or occasioned thereby" during the currency of the policy. But such payment is again conditioned on the principle

[3] The Associations mentioned in the policy are the Liverpool and London Steamship Protection Association, Ltd., and / or North of England Protection and Indemnity Association.

of co-insurance. The underwriter, in other words, will pay such sum only in the proportion that the insurance taken bears to the policy value of the insured vessel. With the consent in writing of the majority of the underwriters on the vessel (in amount of the insurance) the insured may contest his liability under any of the foregoing heads. Should this be done the policy promises payment of the costs incurred by the insured, but again only in the proportion that the insurance bears to the value of the property.

Excluded Risks.— These are few in number and are usually expressed as warranties. Thus underwriters are unwilling to assume claims arising directly under Workmen's Compensation or Employers' Liability acts, and any other statutory or common law liability in respect to personal accidents; likewise those caused by strikes, locked-out workmen, or persons taking part in labor disturbances, or riots, or civil commotions. The first type of risk is protected by another well-known branch of insurance, and the latter is one for which the community, through its machinery for the preservation of law and order, should assume responsibility. Two other warranties free the underwriter from the effects of "capture, seizure, arrest, restraint or detainment, and the consequences thereof, or of any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations, whether before or after declaration of war," and from "any consequential damages or claims for loss through delay, however caused." At one time builders' risk policies covered property while being conveyed, sometimes over great distances, from the place of manufacture to the shipbuilding yard. To-day, however, the policy is usually "warranted free from claim for loss or damage to engines, boilers, and all other materials while in transport, except in the port at which the vessel is being built." For an extra premium, however, this clause, and in fact any of the other warranties mentioned, may be waived by the underwriter. Lastly, it is the practice on the Pacific coast, where the danger of great loss to vessels under construction by earthquake shocks is well recognized, to make the policy read: "warranted free of loss or damage caused by earthquake."

CHAPTER XIV

REINSURANCE AGREEMENTS[1]

Definition and General Purpose.— Reinsurance may be defined as the practice whereby one underwriter (the original insurer) transfers his liability under a policy, either in part or in whole, to some other underwriter (or a group of underwriters) known as the reinsurer. The contract of reinsurance is made solely between the underwriters, the insured possessing no right to make a claim against the reinsurer in case of loss. From an economic standpoint, however, the insured is vitally interested in the practice. It should always be borne in mind that the original company, if of ordinary size, usually retains only a limited amount of the liability involved on any large risk that may have been placed with it, and transfers the balance to other reinsuring companies. No matter how large the policy, the property owner must look to his original insurer for the payment of a loss. Yet the size of the risk assumed may be altogether too large for the carrying capacity of the company with which it was originally placed, and reinsurance of the risk may be assumed by the insured as a measure of ordinary protection. But since the original insurer depends upon the reinsuring companies for the payment of their share of any loss, it follows that merchants and vessel owners are vitally concerned in the financial strength of the reinsuring companies. As a matter of fact these companies have insured the insurance placed with the original company, and failure on their part to meet a loss may in turn cause the direct-writing company to fail in meeting its liability to the insured. It is, therefore, highly desirable that property owners, when placing a large policy with an underwriter, should make inquiry as to the reinsurers with a view to ascertaining their financial standing.

The fundamental purpose of reinsurance is to give under-

[1] *See* Appendix XV, 255, on "American Marine Insurance Syndicates." These syndicates were executed on June 28, 1920, when this volume was already in press.

writers the benefit of the greater certainty that results from a proper application of the law of average. By spreading their liability over a large number of risks, and retaining only a moderate amount in each instance, they succeed in stabilizing their business. Each company is enabled to accept policies for large amounts and yet can protect itself against staggering losses by adjusting its risks in such a manner as to preclude the possibility of any serious inroad into its capital and surplus.

To assume and retain a $1,000,000 risk is obviously unbusinesslike because a total loss of this single venture might more than wipe out the entire annual profit on all the other business of the company. But by accepting many risks, and by scaling down all that are larger than the normal carrying capacity of the company justifies, certainty in business is substituted for uncertainty. A wide distribution of comparatively small risks produces a more certain income and eliminates the element of gamble. A regular trade profit is assured with reasonable stability from year to year. Without reinsurance on a large scale the risks assumed by a given company must necessarily be restricted in number and be uneven in amount. With reinsurance, however, one company will give its excess lines to other companies, and they in turn will give their excess lines to it, with the result that all the companies will enjoy an adequate total volume of business, consisting of a large number of risks all limited properly as to the extent of the liability involved. As one witness stated in the recent Marine Insurance hearings: "The bulk of the business counts for a great deal in marine insurance. I am spreading the losses which will occur, over a large number of individual risks on which no loss will occur, in order to take care of those risks on which losses do occur. If I have only a small number of risks, the probability is that I shall have more losses on a small income than that income will pay. Suppose, for instance, that there are bound to be ten total losses in the year. If I have only one hundred risks I might have five out of these ten losses. But if I have a thousand risks I may have the full ten losses, yet I have increased my premium income without increasing my loss outgo in the same ratio."[2]

[2]Marine Insurance Hearings before the Subcommittee on the Merchant Marine and Fisheries, September, 1919, 222.

Other Advantages Resulting from Reinsurance.— Various other reasons make reinsurance an absolute necessity for the convenient conduct of modern business. Mention should be made of the increasing frequency with which single large business concerns make shipments requiring the entire carrying capacity of a large vessel, and where, to economize in time and labor, there is a desire to place the insurance with one or a few large companies, rather than negotiate the business with numerous smaller underwriters. Under these circumstances the desire is to place the insurance with the least trouble and annoyance, and have the original underwriter assume the work of distributing the large risk among reinsurers. If the risk is a very large one, such distribution may be so extensive as to involve scores of companies. In fact, some of the reinsurers may, in turn, reinsure with other reinsurers, until practically all of the world's leading reinsurance companies are participants in the risk.

Under "open" policies it frequently happens that companies are subject to enormous liability, due to congestion of cargo on board a single vessel or in a single location, which it is impossible to control. This congestion often results from the fact that the cargo of various shippers, insured by the same company, may happen to be concentrated on a single steamer. It is impossible to estimate how many shipments on a single vessel are covered under various policies of insurance, each in itself to the limit of the company's capacity. It is also impossible to estimate the amount of risk concentrated in this way in the course of transportation at, say, a single compress point or location on shore. It is therefore necessary to arrange very large automatic reinsurance covers, because no single company can handle this business with safety to its resources. Moreover, it is often the case that underwriters are not in a position to deal with known facts, since they cannot obtain immediate advices as to their total individual liability on a vessel before her departure. If prior reinsurance arrangements have not been entered into with other underwriters, one individual company might find itself with one or two million dollars of liability several weeks after the vessel has sailed, and at the same time experience the utmost difficulty in obtaining reinsurance in the open market, and, in fact, may have a total loss before accurate information is obtained as to the total liability involved.

Again, large shipments may have to be financed and started on their voyage with utmost speed, and to this end large amounts of insurance may have to be negotiated within a few hours. Inability to do this would greatly handicap many lines of business, especially where competition between markets requires the prompt acceptance of orders at closely figured prices. To meet such situations, it is common in various trades to have groups of underwriters undertake jointly the insurance of very large values, each company participating to an agreed percentage. In some instances, even, one joint certificate is issued, thus saving the insured and insurers much time and labor. Under such arrangements the interested party may go to one of the underwriters and obtain all the insurance needed upon a valuable cargo, and do so between the time of loading and the close of banking hours, thus assuring the speedy placing of loans. Under certain of these arrangements losses are also adjusted and paid through the office underwriting the business, the insured being thus saved the trouble of looking to the several companies for the sum due from each. One company office acts as a clearing house for the distribution of risk, premiums and losses between the members of the Association. The companies are also enabled to do the business at a minimum cost, since practically all the head office detail is eliminated. Moreover, rates are stabilized, and cut-rate competition, which tends to weaken the security of the insurance, is avoided. To allow companies to know upon what basis their agent can bind them, some sort of tariff is published, based upon an inspection of vessels by competent surveyors and upon other proper conditions which the underwriters feel should govern the risk.

Automatic reinsurance arrangements are also instrumental in keeping a large amount of marine insurance in this country which would otherwise go to foreign markets. Since companies do not always possess information as to their total liability on any one steamer, they are obliged to canvass the American market. In doing so they often find it necessary to pay fancy rates, owing to the crowded condition of the market, brought about by the fact that other companies either find themselves in the same position or are loath to take the excess lines for fear that their clients might also ship large values on the same

steamer. If the shipments on board are definitely known, the matter of reinsurance can be easily dealt with on the basis of known facts. Unfortunately, however, there is often a long interim of time when the shipments of cargo on a given steamer are unknown. It was such uncertainty that largely led to the formation of many of the most comprehensive reinsurance arrangements whereby the liability of each is automatically reinsured with all the other members on the basis of agreed percentages. Without such automatic arrangements many companies would be driven to the expedient of cabling their reinsurance orders to Europe. With such arrangements in force, however, a large amount of business can be retained in the American market and thus kept from going abroad. In other words, the companies composing the American market could not assume all the reinsurance desired because of the fear that they might themselves have large commitments to look out for. Despite existing reinsurance agreements, a very large amount of American marine insurance must still go abroad by way of reinsurance. In a very large number of instances the companies have advised that this is not due to choice but to necessity, owing to the comparative absence of reinsurance facilities in this country, as compared with the large market abroad. The value of a wide spread of risks is universally recognized, and American companies are practically a unit in declaring that the development of a comprehensive reinsurance market in the United States will serve as one of the most effective ways to prevent the present large exportation of marine insurance to the European market.

Extent and Growing Importance of Reinsurance.— Recent years have seen a considerable growth in the reinsurance facilities available in the American market, and it is generally asserted by underwriters that a line of at least $1,000,000 can be covered with little difficulty. But despite this recent improvement, a very large share of the reinsurance effected on American business is placed with non-admitted or with the branch offices of admitted alien companies. Some of the largest American companies have advised that they have in force over one hundred marine insurance contracts with other companies. It is also interesting to note that these contracts, involving, as they do,

all sorts of special financial arrangements and conditions, are regarded by the contracting parties as highly confidential in nature and are jealously guarded against falling into the hands of competitors.

The importance of reinsurance may be forcibly illustrated by a few figures. Thus for all of the eighty-eight American Marine Insurance companies, gross and inland marine premiums for 1918, after deducting returned premiums, amounted to $173,938,000, and of this amount $71,762,000, or forty-one per cent, was reinsured with other companies. For the forty alien companies with branch offices in the United States the showing is similar, gross marine and inland premiums, after deducting returned premiums, amounting to $71,898,000, and the amount of this total reinsured with other companies aggregating $30,196,000, or forty-two per cent. Many American companies, it should be added, place much of their reinsurance abroad in non-admitted companies or with the foreign offices of alien companies possessing branches in this country. During 1918 thirty-three American companies reinsured over $10,100,000 of marine premiums in this manner; and twenty of these companies, reinsuring $7,228,000 of premiums, named sixty-eight non-admitted alien companies, located in ten countries, as their reinsurers. Moreover, of the eighty-eight American companies, operating in 1918, twelve were not direct-writing companies and received all their marine business as reinsurance from other companies, while one was a direct-writing company, but reinsured all its business with other underwriters. Were it not for reinsurance, a very considerable number of the smaller and less well-known American companies would practically disappear from the field, because of their inability to obtain adequate direct lines for themselves.

"Share" or "Participating" Reinsurance.— As might be inferred from the designations used, this form of reinsurance agreement provides that the original underwriter will give his reinsurers a definite share (proportion) of his business. The reinsurer, in other words, is allowed to participate in the business of the original underwriter. Sometimes the agreement extends only to a single account placed by the original underwriter for his client, the reinsurance contract providing, for

example, that it covers a one-sixth part of such shipments as are accepted by the ..... company (original insurer) under policy No. ..... issued for the account of the ..... manufacturing company. At other times the reinsurer shares in all of the original underwriter's business on a certain commodity, or shipments on a particular steamer, or on special types of business, such as lighterage, fishing, etc. Sometimes the agreement covers a stipulated interest in all business moving over various described routes of travel or by certain described lines of vessels. In still other instances two or more companies may agree to reciprocate — mutually share in each other's risks, although the respective proportion allowed may be different — as regards all their business wherever written. Such a plan is often used where several companies are under the management of one marine insurance office. Similarly, many instances of such participating reinsurance are found where a given office manages American as well as foreign marine insurance interests.

Under share reinsurance it is customary for the original underwriter to inform his reinsurers periodically of the facts surrounding the various individual policies covered by the agreement, such as the voyage, vessel, sailing date, nature of the cargo, policy conditions, premiums, and amount of insurance. These facts are declared on special sheets going under the name of Bordereaux. Where more than one reinsurer participates in the business — known as concurrent reinsurance — the aforementioned sheets must be duplicated so as to provide each reinsurer with a copy.

Reinsurance "Pools" or "Exchanges."— So-called reinsurance pools are share or participating arrangements whereby a number of companies — varying from as many as ten to thirty-six in some of the leading American examples of such agreements — arrange among themselves to share all insurance on a given commodity or on all business within a given territory on the basis of certain agreed proportions. In effect, each member company undertakes to give to each of the other companies in the arrangement a certain proportion of all the business it writes at certain rates of premium agreed upon by the group.

Most frequently these agreements represent a truce entered

into after a period of severe competition at unprofitable rates. Under such circumstances the purpose of the plan is to effect an understanding which will restore and maintain a profitable level of rates. At other times the primary motives have been the forestalling of competition, which leaders in the business felt confident would otherwise arise, or the automatic distribution of unusually heavy lines that might be offered to any one of the members in order to obviate the necessity of scouring the marine insurance market for necessary reinsurance. Allotment of the respective shares is usually based as nearly as possible upon two factors, viz., the amount of business which each individual company may have had on its books when the pool is formed, and the line carrying capacity of the company. When once established the pool is usually strong enough to keep competitors out of the field, because the united action of all the members is sufficient to meet any rate cutting campaign by outside parties. Frequently, however, membership may be granted to a newcomer in return for business which it may have the power to give on some other line of traffic, i. e., a company may be allowed to enter a pool which relates to traffic in which it has no share, providing it arranges to permit the other members to participate in some other pool in which they have little or no business.

The beneficial character of pooling arrangements to both reinsurer and reinsured must be apparent. To the companies they mean, if properly conducted, the elimination of excessive competition, reasonable assurance of a fair profit, the avoidance of irritating jealousies, and the reduction of overhead expenses. To the insuring public they result in the enhancement of the security of the protection offered, the retention and enlargement of capital in the business, and the elimination of much labor, inconvenience and loss of time in the placing of large amounts of insurance. In view of the large proportion of the nation's marine insurance handled in this manner, the following agreements deserve special mention:

The Cotton Reinsurance Agreement.— Under this agreement a share of all cotton risks assumed by the original company is reinsured, excluding domestic shipments insured under policies issued to American spinners and / or American consignees in

northern states. Geographically the agreement covers from the interior of the United States to all parts of Europe and Japan. The distribution of risks is on the basis of an agreed number of shares, each company issuing a direct policy to the insured and ceding to the other companies a share of each risk in accordance with the stipulated percentages. The rates are arrived at by conferences between the representatives of the companies. There is, however, no general agreement in writing, the only contracts being those for reinsurance issued by each company to each of the other members. Some twenty-six interests are associated in the arrangement, representing a total of 120 shares. One interest, involving four companies, represents twenty shares; another interest, composed of two companies, twenty shares; another interest, representing three companies, fifteen shares; another interest of two companies, nine shares; and still another interest involving four companies, eight shares. The remaining shares are represented by companies, two of which represent twelve shares each; one, ten shares; three, three shares; two, two shares; and three, one share each. Of the 120 shares, however, 59¼ shares are retained or placed elsewhere than with the companies mentioned. The contract is accompanied by a voluminous printed folder containing a tabular outline of the marine insurance rates on cotton shipments by approved steamers (including United States shore risk and country damage as per policy terms and conditions) for the season 1918-19, subject to change on thirty days' notice. The folder specifies the voyages between a large number of American ports and British and French ports, and for each voyage stipulates the rate by types of steamers. Rates are also mentioned for direct shipments to approved ports in Japan, China, India, Manila, Vladivostok and Mexico.

Cotton Fire and Marine Underwriters.— This refers to an agency of a number of companies writing cotton marine and transit insurance with a reciprocal reinsurance understanding. Each company operating through the agency issues an individual policy to a shipper and covers from the time the cotton becomes the property of and is at the risk of the shipper until the liability of the shipper ceases, whether here in America or abroad. The risk under each policy is reinsured with the other companies in

the agency at a fixed percentage of each risk written. The manager, with the advice and approval of a managing committee appointed from the interested companies, handles rates and all other matters pertaining to the business. There is no written agreement between the companies, but only an acceptance of reinsurance by each company of its agreed percentage of all liability assumed by each company represented in the agreement.

Burlap Agreement.— This agreement is similar to the cotton agreement and covers the traffic in jute, jute butts, bagging, burlaps, and gunnies from Calcutta to ports and places in the United States, British North America, Cuba, or Porto Rico. Twenty separate interests, representing, however, a much larger number of American and foreign companies, constitute the membership and divide the business on the basis of 172 shares. Each company is obligated to reinsure a portion of any risks which it may assume with the other members. Four interests are entitled to eight shares each, four to four shares each, and four to one share each. The balance is distributed among eight other interests, each receiving respectively two, five, seven, thirteen, fourteen, twenty-four, twenty-five, and thirty shares. The rates received on the reinsurance are stated in the contract.

Joint Grain Certificate.— The purpose of this Association of eleven leading companies is to facilitate the writing of large amounts of insurance on grain moving on steamers on the Great Lakes. The associated companies issue a joint certificate which certifies that the insurer is protected by the several companies, "each insurer for himself and not one for the other." The respective percentages for the several companies are expressed on the certificate, and it is agreed that the certificate "represents and takes the place of the original policies, and conveys all the rights of the original policyholder for the purpose of loss or claim as fully as if the property were covered by a special policy direct to the holder of this certificate." It may be added that the certificate is signed by the authorized agent of all the companies, who is appointed to conduct all of the joint ventures. The interested companies hold an informal conference once a year and agree upon rates for the current season.

Lumber Reinsurance Association on the Great Lakes.— Under this arrangement companies reinsure each other's policies on

an agreed percentage of the risk assumed. Contracts are made at the beginning of the shipping season between the shipper and the company he may select, to cover against marine perils on lumber and timber products moving on the Great Lakes or the St. Lawrence River. Report of each shipment is made when the insured receives advice of the same. The vessels used are restricted to those which have been inspected and classed by the American Bureau of Shipping, and each shipper is supplied with a book containing a list of these ships and their respective classes. The companies have adopted a tariff as a basis for reinsurance, and this is attached to each contract made. The office which writes the risk is the clearing house for the distribution of risk, premiums, and losses between the members of the Association. All insurance is issued on the basis of "each for itself and not for the others," the companies joining only in such matters as make for the convenience of shipper and company and which are helpful in the reduction of expenses through the handling of the business by a central agency.

Inland River Agreement.— Twelve leading companies have entered into an inter-reinsurance contract, each with the others, covering their respective interests on all hulls, cargoes, freight lists and charges as regards inland waters of the United States, and which may be insured in any one of the companies through a certain general agency, or its representatives and sub-agents. The agreement, however, does not embrace any business covered by the New Orleans River Association, nor certain lines which are not acceptable to all parties to the agreement. The business is apportioned so as to give three companies fifteen per cent each, four companies five per cent each, and the remaining three companies six per cent, nine per cent, and twenty per cent, respectively. The maximum line contemplated on any one venture, either on hull, cargo, freight list or charges, or on all combined, is limited to a certain amount, and any excess over that amount is to be reinsured by the general agent where and when possible and to the best advantage. But should no such reinsurance be secured, it is understood and agreed that each member assumes its proportionate share of such excess.

New Orleans River Association.— This Association is a clearing house arrangement, and the secretary receives regular

reports and distributes monthly the amounts and premiums among the companies interested. The rates paid to all the companies interested are the same.

American Foreign Insurance Association.— Twenty leading American fire and marine companies form this Association for the purpose of developing a fire and marine insurance business in foreign markets. Reinsurance is only one of its purposes, and in this respect each member must participate in all writings, losses and expenses according to the percentage assumed by such member in either the fire or marine departments.

"Excess Reinsurance."—Despite the distribution of risk through share or participating agreements, the original underwriter may still be left with a liability exceeding the normal line customarily retained. Such excess liability may be shifted to other underwriters through so-called "excess reinsurance" contracts, which describe the definite time and geographical limits, and which apply as soon as the original underwriter has an excess liability under all his contracts, including reinsurance arrangements as well as policies issued directly to clients.

The various interests to be considered in determining the original underwriter's retained liability, such as hull, freight, cargo, profits, etc., are set forth in the contract, and it is then provided that the original underwriter shall assume all of these risks unless they exceed a limit of, say, $150,000. Should the interest at risk on any one vessel, or in any one location, exceed this retained line, the reinsurer agrees to cover the excess to an amount not to exceed, let us say, $100,000. Any share reinsurance which the original underwriter may have for his protection is usually deducted in ascertaining the net retained line. Innumerable variations exist as to the subject matter and rights covered. Sometimes the coverage is practically world-wide, while other contracts are limited to certain commodities, or to all shipments over certain routes or on certain vessels, or to all shipments on certain customers' accounts. It is also provided, as a rule, that in ascertaining the excess, the entire interest which was intended to be loaded aboard the vessel should be considered. As a consequence there is taken into account the value of the goods which may happen to have been destroyed or damaged on shore or while on lighters prior to their being loaded, the rein-

surer assuming his *pro rata* liability for such losses. Sometimes the contracts are non-reciprocal, while in other instances the arrangement is reciprocal, i. e., the parties reinsure each other's excess lines.

Serious complications may arise under excess contracts and it is therefore customary to outline principles and methods of procedure in advance. Should an excess have once attached, such attachment will continue throughout the balance of the venture irrespective of any changes, such as transshipment of the cargo, division of interest, partial discharge, or partial loss. This means that when an excess once applies, the excess reinsurance fulfills the same function as a share contract, i. e., both reinsured and reinsurer are liable for their respective proportions on all losses. Where, however, new cargo is taken aboard at transshipment points, the question of whether such additional cargo is covered by the reinsurance will depend upon the treatment of the subject in the contract itself.

Reinsurance Covering Excess Losses.— Various situations may arise whereby an insurance company, despite the use of excess reinsurance, may unknowingly incur a liability much in excess of its normally retained line. In certain trades as, for example, in coastwise commerce, it may be impossible to trace shipments, thus making it necessary to have the insurance refer to certain transportation lines as distinguished from some specifically named vessel. Or it might happen that values of inland risks, moving over a number of routes, might be so difficult to trace and become so concentrated at transshipping points that the cover obtained under share or excess agreements would prove insufficient.

As a remedy for such a contingency the underwriters may protect themselves through excess loss reinsurance which bases the reinsurer's liability upon the amount of loss in excess of a stipulated sum rather than upon the amount at risk. Thus, the reinsurer may agree to cover on hulls, freights, cargoes, advances, disbursements, and profits, of every kind and description for which the original underwriter is or may be liable under marine contracts now in effect or which may hereafter be issued during the term of the reinsurance agreement. But provision will be made that no claim is to be paid unless the

original company has paid or becomes liable to pay to its policyholder on account of loss by any one disaster a sum exceeding, let us say, $50,000, and then for not exceeding $100,000, upon the excess thereof, by vessels the character of which is described. Similarly in connection with shore covers, excess loss reinsurance is frequently used. One company mentions a case in point where a single shipment of 20,000 bales of cotton, belonging to one shipper and valued at $4,000,000, became concentrated in one location, and explained that such congestion caused it to seek protection against a heavy loss by taking out a cover in London to reimburse it should a loss in any one fire exceed the amount provided for its protection through other reinsurance arrangements.

It must be apparent that the chance of loss under this type of reinsurance contract is considerably less than under other forms of excess reinsurance, the risk depending upon the amount of loss which the original underwriter agrees to assume before making a claim under his reinsurance contract. The reinsurer is liable only for losses in excess of this figure and, except in rare instances, does not become liable for partial losses. Since the risk is greatly reduced, rates on this form of reinsurance will be correspondingly lower. In fact, if the point at which the reinsurer becomes liable is placed sufficiently high, the reinsurance protection is really meant to cover only total or constructive total losses. It should also be noted that excess loss reinsurance does not involve the principle of co-insurance. In this respect it differs from excess reinsurance based upon the amount at risk, where the reinsuring underwriter is a co-insurer in the sense that he must pay losses in the proportion that the amount insured under the reinsurance contract bears to the total insurance granted by the original underwriter on the property in question.

Special Reinsurance Contracts.— Much simpler than the foregoing arrangements are those reinsurance contracts which cover only a specific risk or which may relate merely to a total loss. Large companies find it necessary to place such special reinsurances on individual risks almost every day of the year. The contracts may be either "excess," "participating," or "flat." The last term refers to agreements whereby the amount

of the reinsurance on a given risk, $25,000 let us say, remains the same irrespective of changes in, or even the cancellation of, the reinsured's retained line.

Under some contracts the reinsurer must accept cancellation in case the original policy should never attach. But under other contracts the original underwriter is not given the privilege of cancellation and owes the premium on the entire amount of reinsurance even though the reinsurer never assumed any risk whatever, and the original underwriter failed to receive any premium. On first thought this arrangement may seem very unfair, but it must be remembered that the reinsurer must always have regard for his underwriting capacity. By accepting the reinsurance he assumed an apparent liability for the time being and, in view of his carrying capacity on a given vessel, made no further effort to acquire other insurance. Under these circumstances enforced acceptance of a cancellation might constitute an injustice in that it would cause the reinsurer to lose profitable business which he could easily have taken had it not been for the acceptance of the reinsurance in question.

Conditions Governing Reinsurance Agreements.— Aside from the forces discussed in the preceding pages of this chapter, so many other conditions of varying kind and form are found in reinsurance treaties and agreements that space limits forbid a complete analysis. Suffice it, then, to describe briefly those important features most commonly included. At least four special conditions should be mentioned:

Original Terms and Conditions to Apply.— For the average company reinsurance involves the placing of a large number of separate risks, many of which were originally insured under policies differing greatly in their terms, endorsements, valuations, and perils assumed. It is, therefore, important that the reinsurance contract, covering all the separate risks, should take proper account of all these differing conditions. Accordingly it is common to use some such "reinsurance clause" as the following:

> The reinsurance shall attach automatically at the same time as the liability under the company's original insurance or reinsurance, and is subject to the same clauses, terms and valuations, including all risks (here follows an enumeration of the routes, locations and conveyances covered) and shall cover the interest until safely delivered at final point of destination in the interior or elsewhere.

The purpose of this clause is such as to make the judgment and acts of the original insurer, except as otherwise provided, binding upon the reinsurer. The clause, however, is supplemented with other sections defining the amount of the coverage, the commencement and duration of the reinsurer's liability, the conditions under which the original insurer may reduce his ordinary retained line, the manner of making declarations, alterations, and cancellations, the method and extent of making deposits by the reinsurer for the performance of obligations under the agreement, the rendering of periodic accounts by the original insurer, and the classes of business, if any, which the original underwriter may exclude from the agreement.

Settlement of Premiums, Commissions and Expenses.— Where the reinsurance is based on similar terms and conditions, it is advantageous also to have the original rates apply, less a discount which has for its purpose the offsetting of commissions, taxes, license fees, discounts, rebates and returns, and other expenses incurred by the original insurer. It is also customary for the reinsurer to make a further allowance of a stipulated percentage (a contingent commission) on the annual net profits, and the method of calculating the same is set forth in minute detail. Where the reinsurance is not based on similar terms and conditions the original underwriter is also compensated for those perils which he himself assumes. Moreover, in the majority of excess reinsurances it is customary to use rates differing from those applying to the original insurance.

Settlement of Claims.— It is also advantageous to have the reinsurer bind himself to follow the same method of settling claims as is provided for in the contract given by the direct-writing company to the insured. This is accomplished by some such clause as the following: "The company alone will settle all claims and such settlement shall, under all circumstances, be binding on the reinsurer in proportion to its participation." Further provisions are inserted to the effect that the reinsurer must pay its *pro rata* share of all expenses connected with any resistance to negotiations concerning settlements or losses; that the reinsurer shall be credited with its share of any reimbursements; that all loss settlements shall be unconditionally binding upon the reinsurer; and that the original underwriter may draw

at not less than three days' sight on the reinsurer for its proportion of any loss equaling or exceeding a certain designated sum, and that losses for smaller amounts shall be settled in the account.

Arbitration of Disputes.— In the event of differences arising with reference to any transaction under the reinsurance agreement, the same are usually referred to two arbitrators (who must be insurance or reinsurance managers and not in the service of any of the parties to the agreement) and one of whom is chosen by each company. An umpire is chosen by these arbitrators before they undertake the arbitration. If unable to agree upon an umpire, each arbitrator names one and the decision is made by drawing lots. When arbitrating a case the arbitrators must treat the agreement "as an honorable engagement rather than a merely legal obligation, and their decision, or that of the majority of them, shall be final and binding upon the contracting parties without appeal." In settling a case both arbitrators and umpire are "relieved from all judicial formalities, and may abstain from following the strict rules of law." Should either party fail to appoint an arbitrator within one month, the other party is privileged to name both arbitrators and the two shall then elect an umpire.

Special Motives for Effecting Reinsurance.— Spreading of risks, with its resulting reduction of liability, is not the only purpose which induces underwriters to seek reinsurance. Certain exceptional uses should be mentioned, although their aggregate importance is small in comparison with the functions already discussed. Three such uses may be briefly described:

Arbitraging.— This practice is pursued in many markets and relates to the practice of clipping a profit by buying in the low market and selling, at about the same time, in a higher market. In the marine insurance market it may happen that an underwriter closes insurance at two per cent and then finds that he can reinsure all or part of the risk at the lower rate of one and one-half per cent, the difference of one-half of one per cent being his profit. If the entire risk is reinsured, and it the reinsurance for which the arbitrager remains legally the guarantor is financially sound, the original underwriter has relieved himself of all liability, and may regard the one-half of one per cent difference in rates as a clear profit.

Reinsurance on Missing or Overdue Vessels.— Where vessels are missing or overdue, or where it is rumored that they have met with disaster, it is only natural that interested underwriters should seek to relieve themselves of all, or at least a share, of their liability. This they may do by having other underwriters accept a portion of the risk at greatly increased rates of premium. During the recent war numerous instances occurred where the probability of loss seemed so reasonably certain that underwriters paid premiums of ninety to ninety-five per cent to reinsurers in order to be relieved of their liability. It is not uncommon, when a vessel is first reported as overdue, to have the original underwriter reinsure a limited portion of his risk. Later, if the news continues unfavorable, both underwriter and reinsurer may unload a further portion of their risks to other reinsurers at an advanced rate of premium, and later all parties concerned may again subdivide their risks. This process may be continued until, when definite news of the vessel's destruction finally comes to hand, the loss will be spread over most of the underwriting community. But it is always understood, and the law is to this effect, that the reinsurance must be based on good faith of all parties concerned and that there must be no concealment or misrepresentation.

Reinsurance of Risks of a Liquidating Company.— For various reasons, such as impairment of capital through unfortunate losses or inability to transact business on a sufficiently paying basis, a marine insurance company may wish to liquidate its affairs and retire from the field. Many of its policies, however, are unterminated. These contracts the retiring company may wish to protect, and yet its desire is to liquidate before their maturity. If the retiring company possesses sufficient funds to pay the necessary premiums it may find some other underwriter willing to take over its entire business by way of reinsurance. Consequently the policyholders are protected, the company is enabled to retire, and the liquidation is speedily and amicably effected.

REFERENCES

WINTER, W. D.: *Marine Insurance: Its Principles and Practice.* Chap. XVII: "Reinsurance."

CHAPTER XV

MARINE UNDERWRITERS' ASSOCIATIONS

Marine insurance involves many matters of such a nature as to make coöperation between companies highly desirable with a view to applying correct principles and to developing and enforcing uniform, efficient and economical practices. Such coöperation between underwriters has been effected through the creation of numerous so-called Marine Underwriters' Associations. These associations, or conferences, differ from those mentioned in the preceding chapter in that they do not exist for the purpose of effecting reinsurance. Instead, their functions are limited to the supervision and improvement of various matters relating to the conduct of business, such as the establishment of just principles, the adjustment of losses, the conduct of salvaging operations, the inspection of the loading of vessels, the adoption of policy forms and conditions, the recommendation of rates for certain classes of risks where that is possible, the legitimate advancement or defeat of vital legislation, the extension of American insurance interests in foreign countries, and the safeguarding and development of the business in the interest of the members.

Many of these associations are formal in their organization, and have a constitution and by-laws. A considerable number, however, are very informal in character — mere voluntary associations — and do not even have a constitution and by-laws. At least fourteen such associations play a prominent part in American marine insurance and deserve special mention. Nine of these associations, it is important to note, include among their functions the recommendation of rates, although one — The American Hull Underwriters' Association —has recently abandoned this function, owing to foreign competition in the underwriting of hulls, but it is believed that the cessation of this important function is only temporary.

Non-rate-recommending Associations.— The functions of the six leading associations of this character may be briefly summarized as follows:

The Board of Underwriters of New York.— This Board, which operates under a constitution and by-laws, was incorporated under the laws of New York in 1885 for the mutual benefit of marine insurance organizations doing business in New York, and for the transactions of such business as relates to them in common. In addition to the membership as it existed at the time of formation, any officer, manager or agent in New York, authorized to underwrite for a marine insurance organization doing business in New York, whether incorporated under the laws thereof or not, may be elected to membership. On behalf of its members, the Board maintains correspondents in the principal ports of the world for the purpose of caring for the interests of underwriters, in case of wrecked or damaged property. It also maintains a Bureau of Inspection relative to the loading of vessels in the principal ports of the United States. The Board, however, does not deal in any way with the recommendation or making of rates, its sole object being confined to the safeguarding, in a physical sense, of the subject matter of insurance underwritten by its members.

Numerous special functions are entrusted to standing committees of the Board. One of these relates to the obtaining and depositing of moneys — the proceeds of damaged vessels and cargoes — to be paid over to the owners thereof when a satisfactory adjustment of the case has been made; likewise such funds as may be committed to the Board by foreign underwriters or other parties awaiting distribution. Another relates to the consideration and adoption of uniform regulations, principles and practices relative to the adjustment and settlement of losses and averages. Proper rules and regulations for the loading of vessels with grain, petroleum or other cargoes have also been adopted and a special committee is entrusted with the duty of providing means for the prompt notification of members of the Board when cases of improper loading of vessels are detected. Inventions relating to marine insurance or maritime affairs, or the security of life or property on the sea, are considered by another committee and a report of its findings is sub-

mitted to the Board. Still another committee considers and reports upon matters pertaining to pilot laws and the appointment of any commissioner of pilots.

American Institute of Marine Underwriters.— This Institute, a corporation under the laws of New York, was formed in 1898 at a time when underwriters transacting business in the United States and England had had a succession of very unprofitable years. An attempt was therefore made to effect an agreement, between underwriters doing business in the United States, upon tariffs of rates and the terms inserted in policy contracts. The attempt failed, however, and none of the rate schedules lasted more than a few weeks. After lying dormant for a time, it was found that the Institute could be made to serve as a very desirable connecting link with similar organizations in other parts of the world for the exchange, between insurance companies, of all kinds of marine insurance information. The Institute has also served as an organization through which underwriters may study changes in legislation, and changes in commercial documents, such as charter parties, bills of lading, trade agreements as to purchase and sale of goods, etc. As outlined in its constitution and by-laws, the principal objects of the organization are the procuring of information and intelligence which may be of interest to marine underwriters; the discussion of special problems of the business, including questions pertaining to rates of premium and conditions of the business; the promulgating of views through addresses, discussions, reports and publications; the legitimate promotion or defeat of legislative measures affecting the interests of underwriters; the protection and promotion of the interests of underwriters generally, without undertaking to conduct salvage or kindred work in particular cases; and the promotion of friendly intercourse among the members.

Membership includes all marine insurance corporations organized under the laws of any state of the United States or, if organized in a foreign country, when duly admitted to transact business in this country; the executive officers of any marine insurance company organized in any state of the United States; and the agent, manager, underwriter or resident secretary in the United States of any foreign marine insurance company,

admitted to do business in the United States. Membership is open also to the managers or members of any association of Lloyd's for marine underwriting, except that no subscriber to Lloyd's who carries on any other business in addition to that of underwriting shall be eligible. It may be added that the membership comprises the great majority of marine underwriters transacting marine insurance in the United States.

Association of Marine Underwriters of the United States.— While not at all concerned with the publication or recommendation of tariffs, rates, rules or forms, this Association is instrumental in placing its membership in touch with opportunities for representation in foreign countries. It was organized during the recent war, as it was felt that during that time American marine insurance companies should have some special national organization in contradistinction to the Institute of Marine Underwriters, which is open to all marine insurance companies admitted to the United States, whether American or foreign. Forty-six American companies constitute the membership of the Association, and these represent nearly all the American marine underwriting facilities. Only companies incorporated in one of the states of the United States and whose capital stock is owned by American citizens are eligible to membership, and with some half dozen unimportant exceptions every company doing a marine insurance business which can qualify is now a member. Article I of its constitution sets forth the functions of the Association as follows:

> Its objects shall be to promote friendly intercourse among the members; to promote harmony, correct practices, and the principles of sound marine underwriting; to procure and furnish to the members information and intelligence, which may be of interest to the members of the Association; to discuss, consider, and report upon subjects of interest to the members of the Association with a view to the general improvement of marine underwriting; to promulgate and support the view of the Association on such subjects by all lawful and proper means; to keep its members informed of contemplated legislation inimical to the interest of the members of the Association, and of the insuring public, by all lawful means; and finally to establish a representative organization through which the members of the Association may speak collectively on matters affecting the interests of its members, and of the public insuring with them.

American Foreign Insurance Association.— This Association consists of twenty leading American Fire and Marine Insurance

companies, incorporated in the United States and owned and managed by Americans, as distinguished from companies incorporated in the United States, but which are owned or controlled by foreign insurance companies. As stated in its constitution, the purpose of the Association is to "perfect, maintain and operate an organization for the development, extension and proper conduct of fire and marine insurance and the allied branches of fire and marine insurance in territory other than the North American Continent, Cuba, Porto Rico, West Indies, Newfoundland and Hawaii." In other words, the purpose of the Association is to put American fire and marine insurance upon the world's map in competition with the companies of other nations.

Every member must participate in all writings, losses and expenses according to the percentage assumed by such member in either the fire or marine departments. Each member is under obligation to use all honorable means to advance the interest of the Association in its expressed purposes, and no member is allowed directly or indirectly to write or assume any business of the classes in which it participates in the territory operated by the Association, except by way of participation through the Association. Should any reinsurance treaties conflict with this expressed purpose, provision is made for the cancellation of the same by a certain stipulated date. Withdrawal from the Association is permitted subject to at least six months' notice in advance, but in the meantime nothing shall relieve the withdrawing company from assuming its percentage of the obligations of the Association. The retiring member must also give an undertaking to the effect that in any territory in which the Association operates it will not, during a period of two years after its resignation is effective, accept through any office, agent or other representative of the Association any direct business for its own account in the class or department in which it participated as a member of the Association. It is clearly understood that the business acquired, including the personnel established by the Association or any company representing it, belongs to the Association and shall be respected as such. Detailed provision is made also for the amounts to be deposited by the several members to protect the respective participations allotted to each.

The National Board of Marine Underwriters.— The objects of this Board, which was incorporated in 1885, are stated in its constitution and by-laws to be the selection of correspondents at distant and foreign places to attend and protect wrecked and damaged property, the adoption of measures for the procurement and use of early and accurate information of shipwrecks and other marine disasters, the devising of rules for the loading of vessels with grain, petroleum, and other articles deemed suitable for special regulation, and the securing of a beneficial interchange of views as regards the principles and rules of average adjustments and provisions for arbitration of differences arising from such adjustments. Originally the Association also took an active interest in the approval and recommendation of standard forms of policies and insurance agreements, and in the devising of rules for the classification of vessels for the purpose of insurance. But these two purposes were later abandoned, and for a considerable number of years the Board has not made any recommendations as to standard forms and insurance agreements, or for the classification of vessels.

The membership consists of three classes, viz., resident, associate, and honorary members. Resident membership comprises officers, managers, agents or representatives authorized to underwrite for any American or foreign marine underwriting organization transacting business and maintaining an office or agency therefor in the city of New York. Associate membership consists of officers, managers, agents or representatives of any American or foreign marine insurance company or organization doing business in the United States, but not maintaining an office in the city of New York, and as such are given the same privileges as resident members. Honorary membership consists of such officers, managers, agents or representatives of marine insurance companies or organizations, and representatives of kindred associations or corporations, as may be elected from time to time. Such members are entitled to attend meetings, but do not possess the right to vote or to serve on any standing committee.

The Board of Marine Underwriters of San Francisco.— Fifty-two companies, comprising both American and foreign admitted companies, are members of this Board. Its objects are to promote

harmony and good will, to encourage the observance of correct practices among its members, to secure unity of action among underwriters, and to protect their interests at home and abroad. The membership is composed of organizations engaged in marine underwriting in San Francisco. One of its standing committees investigates the cause of loss or damage to vessel, cargo or freight, examines all charges of incorrect practices against any member, and arbitrates any matter in dispute between interested members arising out of their marine insurance business. Another committee examines all adjustments, excepting particular average on cargo, made up on the Pacific Coast of this country in which two or more members of the Board, through their San Francisco representatives, are interested as insurers or reinsurers. Similarly, upon request by members interested, this committee assumes special charge of looking after any salvage that may become due to any member of the Board, and of collecting and disbursing the same to parties entitled thereto. Still another committee considers all matters pertaining to the appointment, compensation, discharge and maintenance of surveyors, controls their fees, and considers complaints that may be referred to it. Members doing a general hull business are authorized to elect from their number a committee to have general supervision over the hull insurance business. Losses paid on missing vessels shall not be paid prior to the date fixed by the Board after consideration of the special circumstances of each case.

Rate Recommending Associations.— A considerable number of marine underwriters' associations recommend rates to their members, or did so until very recently. In nearly all cases, however, strong emphasis is placed upon the "mere recommendation" of rates, thus affording a strong contrast to the general practice prevailing in the fire insurance business. Fire underwriters' associations, prevailing in all sections of the country, have as one of their principle functions the fixing and enforcement of rates, as well as the method of arriving at the same, upon the entire membership. In many instances, however, particularly with reference to certain trades or types of risk, it is clear that the practice of "recommending rates" through marine underwriters' associations is equivalent for all practical

purposes to their general adoption by all members. There is, however, no definite obligation which binds the members to observe the rates as recommended. Instead, officials of the several associations have emphasized the point that, while the conferences recommend rates for the guidance and mutual benefit of the members, they are not bound to accept these recommendations and are at liberty to withdraw from the association at any time. It should also be observed that in nearly all instances these rate-recommending associations are very informal in character and do not operate under a constitution and by-laws.

American Hull Underwriters' Association.— This Association is not a regularly organized body, but is simply an arrangement for the assembling together of marine underwriters who make a practice of insuring hulls. There are no constitution and by-laws, and surveys and recommendations made are embodied in a circular to the underwriters who may be interested. For purposes of orderly action the underwriters appoint a chairman, three deputy chairmen and a secretary. The membership comprises practically all of the American marine underwriting facilities, including both domestic and foreign admitted underwriters.

The objects of the Association are threefold. In the first place, the Association recommends policy forms and conditions. As a result of the Association's efforts, uniform forms of policies were drawn up in conference with brokers and others. These policy forms are known as American Hull Underwriters' forms, and are recommended to underwriters for their use and, as a matter of fact, are in general use in insuring ocean hulls. Another function is to appoint surveyors to investigate and report as to the condition of vessels about to engage in ocean service. This was deemed necessary because many vessels built for inland service were transferred to ocean trade, and consideration for the safety of life and property at sea demanded that underwriters should take every precaution possible to see that vessels were, or were made, fit for the unusual service which they were about to undertake. Until recently the Association also recommended rates at which various fleets of steamers should be underwritten by its members. Through deliberations

of underwriters in conference with brokers, as well as shipowners, bases were found upon which vessels could be insured, which otherwise would have had great difficulty in securing protection. This function of the Association, however, was discontinued several months ago, particularly at the time when foreign rate cutting on hulls commenced. It has been stated, and it is hoped, that this suspension of the rate recommending function is only temporary and that the same will be resumed as soon as possible.

Atlantic Inland Association.— The purpose of this Association, which is also informal in character and which possesses no constitution and by-laws, is to secure uniform and standard forms of policies and rates for the insurance of inland vessels and coastwise tugs and barges. Questions of uniform conditions and rates are considered by a committee, and the committee's conclusions are submitted to the members for approval, and if so approved, all of the members are advised of the fact. Practically all underwriters engaged in this class of business, it has been reported, are represented in the Association.

American Schooner Association.— The objects of this informal Association are limited chiefly to the standardization of policy forms and rates. All suggested changes are discussed at the annual meetings, and desirable changes are adopted at that time. The schooner form of policy adopted by the Association, which is frequently referred to as the Boston form of policy, dates back a great many years and has been universally used in this country, with comparatively few modifications, for the insurance of sailing vessels. As indicated, the Association also recommends rates. From time to time printed tariffs of minimum rates on American schooners have been issued, these rates being arranged in tables stipulating the age of the vessel, the voyage and season of the year under consideration, and the percentage additions or deductions necessary to make allowance for special policy clauses, or especially favorable or unfavorable cargoes. These tariffs also embody rules relating to valuations, commissions, premium notes, cancellations, prohibitions, and desirable policy clauses. From time to time special tariff cards are also issued with reference to special trades.

Changes in rates have been infrequent. Where rates have

been altered, the change was made after a discussion of prevailing conditions at one of the Association's meetings. Prior to the recent war, sailing vessels were employed almost entirely in the West Indies and Atlantic Coast trade, but since the war they have engaged largely in off-shore trade to South America, South and West Africa and Europe. Accordingly, schedules were adopted for recommending to members rates for some of the principal voyages. As different lines of trade grew up, the Executive Committee recommended rates for these voyages with the idea of all companies charging a uniform rate. All schooner shares are in 64ths or multiples, and it often happens that there are many owners of individual 64ths. Consequently through the recommendations of the Association all owners are, as a rule, charged a uniform rate irrespective of the company they may happen to insure with.

Provincial Underwriters' Association.— Like the American Schooner Association, this organization is very informal and has no constitution and by-laws. At the yearly meetings all changes which may have been suggested by the members during the year are brought up for discussion, and those which are regarded desirable are adopted at that time. This Association has recommended rates chiefly on hull and freight interests, and on certain lines of cargo. Printed tariffs of rates and conditions are issued from time to time and these are divided into two parts, namely, (1) on hulls, and (2) on cargoes and freight. The section on hulls gives the minimum rates based on the age and size of the vessel, the voyage in question, and the season of the year, and outlines the rules relative to prohibitions, special privileges, and various underwriting practices. Also with reference to builders' risk insurance, the rates and conditions are fully stipulated. The printed tariff dealing with cargoes outlines the rates with reference to (1) "coal shipments," and "other shipments"; (2) "sailing vessels" and "steamers"; and (3) "fishing business" and "Provincial lumber and general merchandise."

Yacht Association.— The membership of this informal organization consists of underwriters interested in the insurance of small yachts and motor boats used exclusively for pleasure purposes, and having a comparatively low value. Its purpose

is to secure for these underwriters uniform and standard policy conditions and rates. It is customary for a committee of the Association, prior to the beginning of the yachting season, to consider conditions and rates for the insurance of this type of vessel, and to submit its findings to the members of the Association for approval, after which each underwriter interested is advised of the action taken.

Steam Schooner Agreement (Pacific Coast).— This agreement serves the purpose of recommending to its members minimum rates and conditions on Pacific Coast hulls of the steam schooner type. These rates and conditions are based on the experience of the members.

"Postal Insurance" and "Tourist Insurance" Underwriters' Conferences.— It remains to be stated that many of the marine insurance companies transacting business in the United States are members of the "Postal Insurance" Underwriters' Conference and the "Tourist Insurance" Underwriters' Conference. Both Conferences exist for the purpose of recommending rates, clauses, and policy conditions. They have been organized for the guidance and mutual benefit of the members, but the companies advise that they are not bound to accept the recommendations and are at liberty to withdraw from membership at any time.

CHAPTER XVI

RATE-MAKING IN MARINE INSURANCE

Marine insurance is far more complex than other systems of indemnity as regards rate-making. Fire insurance provides against loss occasioned by a single hazard. Life insurance insures against an event, the occurrence of which is inevitable and the risk concerning which is measured by the application of the law of average to a mortality table. Marine insurance, however, undertakes to indemnify a person against the loss of vessel, goods, freight, anticipated profits, or any other insurable interest, through any one of the numerous perils connected with navigation, such as the perils of the sea, fire, collision, jettison, barratry, "and all other perils, losses and misfortunes."

Importance of Underwriter's Judgment.— While life and fire insurance operate upon a scientific rate-making basis, this can be said of marine insurance to only a limited degree. Except as regards a limited number of commodities and a few classes of hulls, there are no fixed marine insurance rates. This is unlike the practice in fire insurance where rates are fixed by Underwriters' Associations for all member companies and where changes take the form of percentage additions or deductions because of some general change in circumstances surrounding the business as a whole. Leading marine insurance companies do possess a great mass of statistical experience which is used as a basis in arriving at rates. Yet such data serves only as a basis, and must be supplemented by many factors which vary greatly under different conditions. Taking the business as a whole, there is probably no other branch of insurance in which success is so largely dependent upon the sagacity, keenness of observation, and the general specialized ability of the individual underwriter to judge not only the moral and business qualities of men and the inherent character of the subject matter insured, but the effect of climate, seasons, adverse physical forces prevailing on certain routes, trade customs, special policy provisions, and

numerous other considerations upon any one of a large number of risks, as in marine insurance. To a very large extent the business is inherently a system of estimates and the importance of the judgment and ability of the underwriter cannot be over-emphasized.

A marine insurance rate is really a composite — a general judgment — of all the numerous factors which have a bearing upon the particular hazard underwritten. This necessity for comprehensive judgment accounts for the extremely limited number of expert underwriters in a new marine insurance market like our own. It has been one of the chief reasons for having the marine departments of a large number of companies placed under a single management. The absence of trained men has been responsible also for the unwillingness of many of our fire companies to enter the marine insurance business, while of those who have done so, many of the smaller companies confine themselves solely to the taking of risks (by way of reinsurance) accepted originally by some larger underwriter. Witnesses also testified during the recent marine insurance investigation[1] that leadership in the business is a very important factor, and that frequently other underwriters participate in a risk after various amounts have been taken by certain underwriters well known to the insurance community. In London, particularly, various underwriters are experts — leaders — in different trades, and acceptance of a portion of the risk by them will greatly facilitate the underwriting of the balance by others.

Importance of the Personal Factor.— Underwriters must emphasize the personal factor in marine insurance, i. e., must take into account the profitableness or unprofitableness of the individual insurance account. Two vessels may be alike in all respects, yet under different management the rate of premium may be quite different. One owner is efficient as a manager, tends properly to the vessel's upkeep and the appointment of officers and crew, and makes for himself a reputation among insurance companies. The other owner, let us say, fails to do these things and undertakes to save at every point he can with

[1] Hearings on marine insurance before the Subcommittee of the Merchant Marine and Fisheries, House of Representatives, 66th Congress, 1st Session.

the result that his losses are many as compared with the more careful owner. To give these two owners the same rate would be distinctly unjust as between the owners, and an impossible proposition to enforce upon the underwriter. There is no discrimination in giving a lower rate to a well managed line with a good record than to a badly managed line with a bad record. Premiums must in the long run depend upon results as shown by the insured's account, and should therefore be based on the record actually experienced.

Similarly with reference to cargo, it is common to have a difference in rates on the same class of goods, on the same steamer, between the same ports, and under the same policy conditions. Rates are made to insure the man rather than the goods. It is in this respect that so-called "property insurance," relating to fire and marine insurance, is really a misnomer. The merchant who aims to reduce his losses by proper packing and handling, and who makes good salvages, should certainly receive a better rate than the merchant who is negligent in those important particulars. As one underwriter expressed the matter: "The personal equation enters into the making of marine insurance rates very materially. This is right and it should be so. There is a fallacy that has run through practically every bit of insurance legislation I have seen in the United States. There seems to be an obsession on the part of people when you insure a risk, a house or ship or anything of that kind, that things that have exactly the same physical hazard ought to have the same rate. You do not do anything of the kind. You insure a man against loss to that property, and while you take into consideration the construction of that property and its maintenance, it is the human element that is a very vital part of that rate making, and it should be so."[2] It may also happen that shippers of the same commodity on the same steamer and insured in the same company will have different rates because they have different contracts. One might be covered under an open policy which has been in existence for years and the experience record of which has been so highly desirable to the company as fully to warrant favorable treatment. Another shipper, on the contrary, is being

[2] Hearings on Marine Insurance before the Subcommittee on the Merchant Marine and Fisheries, Benjamin Rush, 183-4.

insured for the first time and with the results of his account unknown, thus causing a difference in rates which is not unjustifiable.

To meet the aforementioned situation underwriters keep statistics with reference to individual accounts. If the business is being carried at a loss that fact will soon be revealed by the recorded data, and the company will then be in a position to apply the necessary remedies to reduce the number of losses. Such statistics of ownership, when coupled with the statistical experience pertaining to the trade or route, serve not only to show what rate ought to be charged, but to adjust rates between man and man so that profitable accounts will not be penalized by making up the losses of losing accounts. Even where a new account is offered, the underwriter will endeavor to ascertain what the record of the vessel owner or merchant has been for a number of years in other insurance markets. Moreover, in certain trades the extent of damage through carelessness and inefficiency is not easily identified, although the hazard is known to exist on a large scale. Underwriters may therefore apply the remedy of making a return, in the nature of a reward for merit, to those merchants whose claims are nominal as compared with those whose losses are heavy. The nature of the reward may take some such form as charging a specified rate for a special form of damage and refunding the difference between that rate and a certain percentage thereof if the damage referred to does not exceed the stipulated percentage.[3]

The Moral Hazard.— Individual accounts must also be viewed from the standpoint of the moral hazard, using that term in the sense of unfair dealing as distinguished from carelessness and incompetent management. Good faith and fair dealing should be the very basis of the relationship between insured and underwriter. Their absence is particularly vital in the case of hulls because, indirectly, the insurer of cargo on the vessels is also made to suffer.

Here, again, the keeping of statistics with reference to an ownership, a commodity, or a route is apt to reveal the extent of the dishonest dealing, with the result that very high rates,

[3] The method used, for example, in covering country damage claims on cotton.

or a refusal of insurance altogether, will inevitably follow. In the case of cargo, especially, the underwriter is largely dependent on the insured's statements when the insurance is negotiated. Documentary evidence, it is true, serves somewhat as a check to dishonesty, but it does not always reveal actual existing conditions at the time when the insurance is placed. As a general proposition, the underwriter must depend upon the fairness of the insured to make known all exceptional circumstances relating to the condition of the goods, their packing, etc. Telling only part of the truth often constitutes the worst kind of deception. Underwriters also experience numerous instances of unnecessary and unfair claims, a practice often resorted to by those who, owing to slender profits in their business, have a tendency to use the insurance company as a source of enhancing their income.

Brokers' Accounts as a Basis for Rates.— The foregoing considerations have referred essentially to individual accounts of vessel owners and merchants. But underwriters often view a broker's account as a whole, and this account may involve the risks of numerous owners. Underwriters at London Lloyds particularly, follow this practice on a large scale, and as a result a losing business might be merged with numerous good risks and the account as a whole be continued for a long time. The total gross account of all kinds of business offered by the broker may be satisfactory and will thus hide certain unprofitable branches of business. Owing to the volume of business controlled by large brokerage concerns, they are able at times to force their wishes upon the underwriter even to the extent of placing certain lines of unprofitable insurance. Representing the insured and desirous of holding large accounts, these brokers will drive the hardest bargain possible. They may also operate in several markets, in one of which, say the domestic market, a certain line of business is unprofitable owing to adverse business conditions, while in another, say a foreign market, their line of the same business is on a remunerative basis. They will therefore resort to the expedient of combining the two classes of business and of going to the underwriter with the proposition: "You will have to take the unprofitable risks or I will not give you the remunerative business."

Competitive Nature of Marine Insurance.— Unlike fire insurance, marine insurance is liquid and free, the market being national and even international in scope. As between underwriters there is comparatively little interchange of views with regard to individual shipments or accounts. Conference arrangements for the recommendation of rates are confined almost altogether to certain leading trades, such as the movement of cotton, burlap, lumber, grain, etc., and to certain special types of hulls. Outside of such instances there is relatively, as compared with other forms of insurance, little collaboration between companies in the United States in order to reach some sort of an agreement for an established rate. Abroad conference relations with reference to rates exist to a greater degree than here, but in this country the absence of such coöperation is generally considered one of the most unfortunate features of the business. Instead of combining their statistical experience for rate-making purposes, each company regards its accumulated data as its stock in trade. As one underwriter testified: "It is the one disability and perhaps the one vice of the marine insurance business that we, each one of us, keep our own records and our own counsel and underwrite along our own individual lines."[4] To make matters worse, the underwriter must contend with the shopping proclivities of important brokerage concerns in the interest of their clients. A broker operates as a free lance and often does not owe allegiance to any insurance company. Representing vessel owners or merchants, whose insurance accounts he handles, the broker will sound the various marine insurance markets for the cheapest rate and will consult one company after another to ascertain the best rate and the most favorable policy conditions for his client. Often the broker may be asked to handle so large a volume of insurance — covering all the marine transactions of a large firm or all of the vessels of a large fleet — as to necessitate the use of a number of markets both here and abroad. Under such circumstances the well-experienced broker may arrange with the owner to insure the business at an average rate made up of one rate in one market and some other rate in another. When shipments or fleets of vessels worth

[4] William H. McGee, Hearings on Marine Insurance before the Subcommittee of the Merchant Marine and Fisheries, 200.

millions are under consideration, a very small reduction in rate, say one-sixteenth of one per cent, will mean a large sum of money to the insured. Business conditions in a given trade may also be such as to require the utmost shading of insurance rates consistent with safety. Clients will therefore instruct their brokers to sound the market in its entirety with a view to obtaining the best average rate possible.

International Character of Marine Insurance.— Another peculiarity of marine insurance — an evil as many American underwriters term it — is the facility with which insurance may be exported to foreign markets by brokers or by the branch offices of admitted alien companies. Estimates of competent underwriters indicate that at least twenty per cent of all marine insurance originating in this country is exported directly abroad to be placed through non-admitted underwriters or with the home offices of admitted foreign companies, such business not appearing in any of the official reports issued by our State insurance departments. Such exportation of insurance is practiced chiefly in the case of hull insurance, where leading estimates are to the effect that at least fifty per cent of all such insurance in the United States is thus exported. Builders risks also go largely abroad, either because the foreign rates are lower than American companies can afford to take the business at, or because the law of certain states forbids their companies from assuming this class of risks.[5]

In foreign trade transactions it is often the case that the buyer, actuated by a desire to obtain the lowest rate or to patronize the companies of his own country, dictates where the insurance shall be placed, the shipper having no voice whatever in the matter. Rates prevailing in the different international markets can easily be ascertained by cable, and orders for insurance may be placed easily and promptly through the same medium. It is for this reason that England has for years been the world's leading marine insurance market. Here underwriters are called upon daily to accept cargo and vessel risks from all parts of the world. Thus a shipment of goods from New York

[5] For further data, *see* the report prepared by the author for the Subcommittee on the Merchant Marine and Fisheries, in its Hearings on Marine Insurance, 156-91.

to Calcutta may be insured by the consignee through an agency in Calcutta with a British company located in London. Even where the shipper in America controls the insurance, he may, if actuated by a desire to obtain the very lowest rate, instruct his broker to cable to his correspondent in London to ascertain the foreign rate. This correspondent in turn is in touch with the insurance market throughout the maritime world. If the rates reported are not any better than the American rate, the insurance will probably be placed here. But if the rate quoted abroad is sufficiently lower, the instructions are to place the insurance with the foreign underwriter. It is in this way that a great deal of insurance on American hulls and cargoes disappears from the American market.

American companies are thus obliged to compete with the insurance market of the world. In the absence of such competition it might easily result that insurance rates for American merchants and vessel owners would be higher than those obtained by their foreign competitors, thus handicapping American commerce. This fact should never be lost sight of, and indicates the inadvisability of arbitrarily restricting insurance to domestic companies, or of subjecting rate making to the approval of a governmental board. Attempts have been made to bring marine insurance under the same laws that govern fire insurance rating. Such a policy, however, would likely result in the transferring of much marine insurance to other jurisdictions. Modern business requires marine underwriters to give immediate quotations and there is not time to refer rates first to some governmental board for approval. Long before the board could act upon the case, some foreign underwriter would get the business from the shipper, even assuming that the foreign buyer would not exercise his right to dictate the placing of the insurance. It may also be doubted if marine insurance companies ever can succeed in effecting a coöperative arrangement for the fixing of extortionate rates so long as London Lloyds remains the important institution that it is. The numerous individual underwriters of this world-renowned Exchange serve as regulators of marine insurance rates. Collectively they constitute an international force — a free lance element — which will thwart any attempt to raise marine insurance rates to an excessive level.

Law of Average Applied to Specific Factors.— While the underwriter must concern himself with the aforementioned general and variable factors, it does not at all follow that marine underwriting is based solely upon opinion or luck. Many elements in rate making are fairly constant and, as regards these, marine insurance companies pursue the practice, followed in other lines of insurance, of charging on the basis of a law of averages arrived at through the tabulation of statistical experience on many risks of the same kind over a considerable number of years. If the number of like risks is large enough, and if the period of time extends over ten years or more, it is reasonably certain that the conclusions as to the hazard involved in any particular trade will include all exceptional conditions likely to arise and will, as a consequence, be fairly accurate. In very exceptional cases, however, the data may be supplemented by the underwriter's personal judgment. Although not scientifically correct, such data will serve as an approximate guide for the charging of rates sufficiently high to pay losses, to cover expenses, and to provide a reasonable return on invested capital.

Numerous factors thus lend themselves to an approximate measurement of their importance. Some of these relate only to hull insurance, others only to cargo insurance, and still others to all interests involved in a maritime venture. Briefly enumerated, the most important factors of this kind refer to the effect of physical forces on various routes of travel or at different ports; the inherent quality and characteristics of different types of vessels or commodities; the various methods of operating vessels; the packing, loading, transshipment and discharge of goods; nationality of the vessel and national characteristics encountered in a given trade; the effects of seasons; the duration of the risk; the effect of trade customs; and the loss experienced under various special policy provisions. It will be the purpose of this chapter to discuss these factors briefly and to point out the significance of each to the underwriter in his task of arriving at an equitable and adequate rate.

Natural Forces and Topography.— In passing judgment upon the merits of individual risks, underwriters must necessarily be acquainted with the physical forces and topography associated with the voyage in question. If storms, fogs, cur-

rents, shoals and other natural factors were non-existent, the use of marine insurance would be limited mainly to protection against fire, and the acts of man. But the mighty forces of nature offer many uncertainties to maritime undertakings, and the frequency and severity of their operation varies greatly with the locality, thus causing one route to be dreaded much more than another.

Many of these forces, and some of them extremely hazardous ones, may be designated as passive forces of nature, such as fog, calms, ice, icebergs, and darkness. Fog is the leading cause of collision and stranding and is a great menace in that it necessitates navigation by dead reckoning with its resultant losses to underwriters. Calms are dreaded by the navigators of sailing vessels, although the equipment of such vessels with auxiliary motive power has reduced this hazard materially. Ice and icebergs are a real menace to navigation in many areas, particularly at certain seasons of the year, and have been responsible for some of the greatest catastrophes on record. Other leading factors of the passive kind, which greatly increase the hazard connected with maritime ventures on certain routes, are shallow water, long tortuous channels, long nights, submerged shoals, reefs, and sand bars.

As contrasted with the passive factors are those which may be classed as active, such as winds and storms, tides, tidal waves, currents and seaquakes. The effect of these will often vary according to locality, as for example, where great masses of water are forced by storm or tide through narrow channels or into small bays. All of these factors, whether passive or active, constitute a vital consideration in arriving at a rate with reference to a given route. The laneways of commerce are not on a par in this respect. Some are comparatively free from natural hazards, while others are known to be subject periodically to heavy fogs, storms, ice, tidal waves, etc.

Nor is the open ocean voyage the only consideration, since many of the hazards confronting underwriters are associated with the ports of departure, call, or destination. Here a great variety of problems present themselves. Some ports are known for their difficult approach, insufficient depth, absence of good anchorage ground, lack of protection against the action of waves,

tides or tidal waves which may cause flooding of the docks, and shifting sand bars or other obstructions. In fact, some ports are so inferior that vessels can only discharge cargo by anchoring off shore in fair weather and having the goods lightered by smaller craft. Other ports, on the contrary, are favored by nature against the aforementioned handicaps, or have been improved artificially through dredging and the construction of breakwaters, tidal basins, anchorage buoys and other devices.

Construction and Type of Vessel.— A vessel of some kind must serve as a base for all kinds of marine insurance, be it on hull, cargo or freight. The quality and fitness of the vessel — the means of conveyance — is therefore of supreme importance. To arrive at a proper rate on any insurance risk the underwriter must be placed in a position to know the vessel with respect to its builder and owner, structural plan, material used in construction, type of propulsion, structural strength to resist stresses and strains, adaptability to carry various kinds of cargo, and its age and physical condition.

Purpose of Classification Societies.— As a convenient means of giving such information to underwriters and shippers, various so-called Classification Societies have been organized for the purposes of promulgating rules for the construction of vessels, supervising such construction, assigning a "class" to each vessel, and publishing books containing a detailed and classified description of the most essential features of all vessels coming within their jurisdiction. Although classification is entirely optional, vessel owners would find it so difficult to obtain insurance and would meet with so many obstacles in soliciting freight to best advantage, that few care not to have their vessels listed in the publications of some one of the leading Societies as having been "classed" by it. Classification means that the vessel was designed and constructed under the supervision and according to the standards of the Society. Following the completion of the vessel, surveyors of the Society will examine the work. If all is found satisfactory as to structural plan, materials and machinery, the vessel will be assigned to a class, subject to the understanding, however, that periodical surveys and necessary repairs shall be made as the Society may direct.

As supplementing the classification, however, the underwriter must give thought to certain additional factors, such as the

vessel's use for bulk cargoes, with the attendant danger of the shifting of cargo, long voyages in ballast causing greater difficulties in the management of the vessel during storm and subjecting the propeller blades and motive power to unusual strain, and the presence or absence of a load-line. The last factor is very important, as is evidenced by the present effort of Congress to enact a national load-line law. Most other commercial nations have already adopted laws which prescribe that a definite load-line be assigned to vessels (being painted, cut in, or affixed to the side of the vessel), and which prohibit loading beyond this point in the interest of passengers, crew and cargo, as well as the vessel itself. Underwriters were a unit in the recent Congressional marine insurance investigation in advocating the adoption of a load-line law for the United States.

Most Important Classification Records.— The most important classification record, and also the first historically, is Lloyd's Register of British and Foreign Shipping. While issued originally by London Lloyd's, this publication is controlled at present by an organization managed by underwriters, merchants, and vessel owners and builders, and is entirely distinct from London Lloyd's. According to advices, however, underwriters assume the dominant rôle in the management of the organization. The publication is designed to indicate the general character of all vessels in the British Marine of not less than one hundred tons, besides numerous vessels in foreign fleets. Among other items this publication states the name, materials of construction, details of the decks, the engine and boiler equipment of the vessel, its dimensions and registered tonnage, and the date of the last survey. To keep the shipping world informed of any important changes, supplemental lists are published periodically in connection with the annual edition of the Register. In other words, this Register may be likened to a catalogue of nearly all the important vessels of the world, from which the underwriter may ascertain, by a hurried reference, the general fitness of a specified vessel to make a given voyage or carry a certain cargo. To render such reference on the part of the underwriter still easier, both iron and wooden vessels are divided into separate classes, and these classes into grades, each grade being designated by a code symbol.

Since the classification of vessels is fundamental in the ship-

ping and insurance business, the importance of a publication like Lloyd's Register cannot well be overestimated. This influence has been so potent a factor in British shipping that other nations have been obliged to adopt a similar system; although in this respect Lloyd's Register has served as the standard after which maritime nations have modeled their own registers. To such an extent has the classification of vessels become a necessary adjunct to the shipping industry that practically no vessel of importance in any nation is without a regular classification in some standard register. Chief among the numerous registers now published in addition to Lloyd's are the Bureau Veritas of France, and the Record of the American Bureau of Shipping. The American Bureau, it should be stated, is rapidly forging to the front, and is receiving the hearty endorsement of underwriters as well as governmental departments. Recent recommendations have been made to the effect that this Bureau shall be made the authority in technical matters of construction of merchant ships and their machinery, and that Congress should name it as the regular constituted authority for the fixing of load-lines and freeboard. Early in 1916 this Bureau's classification and inspection extended to only eight per cent of American-built vessels, while Lloyd's and the Bureau Veritas had ninety-two per cent; but by July, 1919, the respective figures were sixty-eight per cent for the Bureau and thirty-two per cent for the other two Societies.

Other First-Hand Aids of the Underwriter.— In addition to the publications of Classification Societies, a well-equipped underwriter's office will also possess maps, charts and port books giving detailed information as to prevailing winds, currents, and ocean lanes, the location of lighthouses and wireless stations and the most pertinent features relating to the depth, protection, and facilities of harbors. Nor do underwriters rely solely upon the information concerning vessels furnished by Classification Societies. Changes in a vessel may easily take place subsequent to her last classification. Accordingly leading underwriting offices have their own surveyors to furnish them with authentic vessel records.

Underwriters' Associations.— As supplementing all of the foregoing, additional assistance is derived from various classes

of associations. Well-equipped salvage associations, usually privately organized, render great aid in the prompt salvaging of vessels and cargo, thus greatly reducing unnecessary loss. Other associations, already discussed at length in a previous chapter, are organized and managed by the underwriters themselves and serve various purposes, such as the fostering of business in general, establishment of just principles, inspection of the loading of vessels, conduct of salvaging operations, adjustment of losses, and the adoption of uniform policy forms and conditions.

Characteristics of Commodities.— Just as it is necessary for the underwriter to give thought to the physical condition of the vessel, so it is essential, in the case of cargo insurance, to be acquainted with the peculiarities of the hundred and one commodities that are offered as risks. Each commodity presents problems of its own, and the hazard may, furthermore, vary according to several circumstances surrounding the shipment. Space limits forbid the enumeration of all factors in this respect, but the following will serve to indicate the underwriter's problem in judging a risk:

(1) Raw products may at times be transported in their original condition, while in other cases the commodity may have been subjected to a curing process prior to shipment which will substantially increase its durability from the standpoint of time, temperature, moisture, etc. Two shipments of the same commodity may therefore represent a totally different hazard, depending upon the preliminary treatment referred to.

(2) Preservation of certain articles will depend largely upon the use of proper containers, or the employment of good methods of packing. Any underwriter can testify to the heavy loss resulting to shipments of American cotton, for example, because of the improper protection of the bales by burlap. Much loss through leakage or evaporation often results because improper containers are used.

(3) Other articles are apt to absorb odors or to be otherwise easily affected by the presence of other commodities, and it is therefore important to know the miscellaneous character of other cargo aboard the vessel, or the degree to which the vessel affords facilities for protecting one portion of its cargo against damage caused by other cargo being shipped at the same time or which,

having been shipped previously, might have left a taint clinging to the vessel.

(4) Certain articles are easily affected by salt water or exposure to the elements, while others, like lumber, remain unaffected. Accordingly, the first class of goods may require special protection, or certainly stowage under deck, while the latter class may, from an underwriter's point of view, be carried safely on deck. Still other articles are of such a hazardous nature that shipment on deck is essential for the protection of all other interests in the venture.

(5) Sometimes commodities are of such a perishable nature that delay in the voyage, if caused by a marine peril, will subject the underwriter to heavy liability. To meet such situations special types of vessels have been designed. Thus refrigerating steamers are especially adapted to the carrying of fruit and meat products. The underwriter must, in fact, take into account the fitness of the vessel to carry the particular cargo offered to him as a risk. Liners, owing to their greater speed and special equipment to meet the needs of trade on the route they serve, will usually justify the charge of a lower premium on the cargo carried than in the case of tramp steamers. The slower speed of the latter means a longer exposure of the cargo to the perils of the sea. Yet in the case of non-perishable commodities which may be transported in bulk, such a vessel will be eminently satisfactory in meeting the requirements of speed and economical transportation. In relation to cargo it is also important to note whether the vessel has a double bottom to protect cargo against damage resulting from stranding, whether it is equipped with bulkheads to guard against heavy loss in case of collision or fire, whether its decks are so constructed as to prevent great water damage during a heavy sea, and whether its design is such as to assure a speedy discharge of water that may have forced itself through hatches or other openings.

(6) Various commodities are susceptible to damage from unavoidable causes, like sweating, spontaneous combustion, etc., which are not necessarily the result of improper packing, loading or handling. In turn the presence of such goods may endanger other contiguous cargo. Liability for such losses is often assumed or avoided by underwriters under special clauses.

(7) The nature of many articles is such as to require skillful loading to prevent unnecessary damage. Thus, where a large single deck steamer is loaded with miscellaneous cargo it is important properly to arrange the location of various classes of articles, since some may be seriously affected by the crushing weight of the top cargo.

Effect of Special Trade Customs.— Not only must the underwriter be familiar with the inherent peculiarities of all classes of commodities, but he must be acquainted with the customs and usages prevailing in different trades. To a large extent physical environment determines the methods under which transportation of goods is conducted; and the underwriter, being obliged to serve the trade if he desires to do any business, must assume the risks peculiar to the market in question.

Frequently the presence or absence of a large tributary area will determine the method of shipment prevailing at a given port. If the buying occurs in the interior the commodity, as for example cotton, may be protected by the underwriter through all its stages of transportation, i. e., from the time it is ginned and weighed to the time it is delivered at destination. Similarly, producers in certain localities desire to have their shipments protected from warehouse to warehouse. But if the buying occurs at the seaport, as is usually the case with export trade in grain, the underwriter's liability usually does not attach until the commencement of the ocean voyage. In some markets it is the custom to process raw material, while in others this practice is not resorted to. Some localities have the advantage of deep-water ports, while in other instances the conformation of the coast is such as to necessitate lighterage with its attendant delays and risks. On many routes transshipment is necessary with its accompanying risk of loss or damage, especially to package freight. Enforcement of liability against carriers is also very important to underwriters, and some communities are much stricter in this respect than are others.

Effect of Seasons.— This factor is of decided importance in both hull and cargo insurance. Its significance to hull underwriters becomes apparent when we reflect that many routes of travel are subject to more or less periodic storms of great violence at certain times of the year, or to exceptional ice condi-

tions. So well understood is the seriousness of this factor that on certain waters the season is "closed" during the winter months to various types of hulls as far as the obtaining of marine insurance is concerned, while to other types there is a material increase in the premium rate. Marine policies also abound in clauses, which forbid the insured to operate his vessel on certain waters, or restrict navigation thereon to certain seasons of the year. Manifestly the underwriter based his premium upon the assumption that the observance of such policy conditions would reduce his hazard.

With reference to cargo insurance, the season of the year may be responsible for a number of special hazards. In the first place the nature of the goods may be such as to be seriously affected by cold or heat. Consequently an unforeseen delay in completing the voyage, owing to some marine peril, may produce, in view of the inherent nature of the commodity, a much greater loss in one season than in another. Again, the market for goods of a given type at the port of destination, or a port of refuge, may vary greatly according to the season of the year. Accordingly, in case of damage to such goods, the underwriter's prospect of realizing a fair salvage may be small or even negligible because of the limited need for such goods at that particular time.

But the greatest hazard confronting the underwriter probably lies in the fact that many of the nation's leading products move most heavily to market at certain seasons of the year, as for example, cotton during the "cotton moving season." At such times enormous values are concentrated in a single locality under exceptionally bad conditions. The great congestion of freight materially increases the fire hazard to the goods as well as to the vessels lying at the dock. There is also a tendency at such times to overload the vessel and unduly to overcrowd passageways and other open spaces, thus rendering more difficult the mastering of a fire aboard the vessel. Moreover, heavy seasonal movements, especially when tonnage is scarce, often furnish an inducement for the entrance of vessels in the trade which are not at all adapted for the purpose. So well is this seasonal hazard understood that underwriters have organized associations which have for their purpose the supervision of the loading of vessels during the seasonal period of heavy traffic.

Nationality.— Nationality of the vessel and national characteristics encountered in a given trade are also important factors in determining rates. Certain nations are mainly dependent upon ocean commerce and their citizens are essentially sea-faring people. On the average the masters and crews belonging to such nations constitute the most skillful mariners, a matter of great importance in times of distress when the underwriter's interests depend largely upon the quick and correct action of those in charge of the vessel. Again, rates may vary greatly as to the standard of commercial honor in trade, some possessing a high standard, while others are known for their lack of commercial ethics, especially in connection with the presentation of unworthy claims, or the effecting of arrangements between merchants at a port of refuge to fleece the underwriter by perfunctory bidding in the market in case it becomes necessary to sell damaged goods in order to prevent their total loss. Underwriters have also experienced much greater pilferage losses in certain trades than is the case in other markets.

Duration of the Risk.— Aside from the geographical and commercial elements of hazard connected with a given trade, the underwriter must necessarily give thought to the length of time during which the risk is assumed. It makes a decided difference with the underwriter whether the protection on cargo commences with its loading aboard the vessel, or whether it extends to shore cover or even to the entire period of transit from the interior to final destination. Modern business requirements, it should be stated in this respect, have made it increasingly necessary for underwriters to grant full coverage to their clients, and one of the most widely used clauses in cargo insurance is the following:

> Including all risks covered by this policy from shippers' or manufacturers' warehouse until on board the vessel, during transshipment if any, and from the vessel whilst on quays, wharves or in sheds during the ordinary course of transit until safely deposited in consignee's or other warehouse at destination named in the policy.

Special attention should be directed to the phrase "during the ordinary course of transit." Premiums are presumed to have been based on existing conditions and ordinary delay is regarded as covered by the insurance. Unusual delay, however, is not

covered and consequently the warehouse to warehouse clause may be supplemented by additional clauses extending the protection to such unforeseen contingencies. But a further difficulty presents itself when one considers the meaning of "existing conditions." Such conditions may be greatly changed by events, as was so well illustrated during the recent world war, when railroad terminals and ports were frequently congested with freight, when the fire hazard during such congestion was enormously increased, when sailings were irregular and often far between, and when the average voyage frequently took two or three times as long to complete as would have been the case under peace conditions. Hence in time of war, or other great emergency, this phraseology must be interpreted very differently from ordinary times. The fundamental purpose of insurance is to protect, and the underwriter is presumed to have accepted the risk, and to have arrived at the rate, in the light of prevailing conditions.

Policy Conditions.— Determination of marine premiums must also involve a consideration of policy provisions which limit the extent of the underwriter's liability. It is one thing, under cargo insurance, to assume liability for all types of losses, and quite another to insure against "total loss only," or to cover only partial losses. Coverage of partial losses, again, may relate only to general average, or to particular average, or only to particular average when caused by a limited number of specified perils.

Reference is had particularly to the numerous so-called "average clauses" used in the business, and all involve an intimate knowledge of the inherent peculiarities of the commodities to which they apply. Thus the insurance may be "free of average unless general," which means that the underwriter assumes liability only for total losses and general average claims and is not concerned with the great mass of partial losses which result from the leading perils of navigation, such as "stranding, sinking, burning and collision." Or the policy may be "free of particular average"— a very commonly used form — in which case the underwriter assumes losses resulting directly from stranding, sinking, burning and collision, the major causes of marine disaster, but is freed from liability for all partial losses

which may arise through other causes, such as storm, inferior packing, etc. Such particular average clauses, in turn, may take one of two forms, i. e., be subject to either American or English conditions. Under the first form (F. P. A. A. C. clause, meaning "free of particular average American conditions") the insurance will be "free of particular average *unless* caused by stranding, sinking, burning, or collision with another vessel," thus freeing the underwriter from all particular average losses which are not the direct result of the four casualties specifically referred to. The other form (F. P. A. E. C. clause, meaning "free of particular average English conditions"), and one much more commonly used in the American market, makes the insurance "free of particular average unless the vessel or craft *be* stranded, sunk, burned or in collision." Unfortunately, the courts have construed this clause to mean that the underwriter is liable for partial losses which may happen on the voyage after the occurrence of any one of the four enumerated perils, although in no sense caused thereby.

In determining rates on cargo and hulls much will depend on the percentages (the so-called "franchise") used in "average" clauses to define the extent of a particular average loss before the underwriter becomes liable. Thus in hull insurance it is customary to provide that the underwriter shall not be liable unless the partial loss amounts to three or five per cent of a given valuation, while in cargo insurance it is the general practice to group commodities into classes and apply a given percentage to each as the measure of damage before liability attaches. Under certain of these clauses, again, the liability is for the full amount of the damage if the percentage of loss is reached, while under other clauses the underwriter is responsible only for the excess. In hull insurance much also depends upon clauses which define the amount to be allowed by way of deduction when new material is substituted for old in the process of making repairs.

Numerous other policy provisions have a vital bearing upon the risk assumed by the underwriter, but their number is so extremely large as to preclude a complete enumeration. However, a few stand out preëminently and their presence or absence materially changes the hazard. They refer to the following:

(1) Through the use of "loading warranties" vessels are often forbidden to take aboard more than a stipulated maximum of certain kinds of commodities, or are prohibited from carrying certain articles at all, or are permitted to stow given kinds of commodities only in certain portions of the hold.

(2) Through so-called "trade warranties," the use of vessels is often restricted to the particular trade, as regards both area and type of cargo, for which they were designed. The recent world war clearly demonstrated the increased hazard involved in transferring vessels built and equipped for the Great Lakes trade to service in overseas commerce.

(3) A reasonable valuation should be stated in the policy because the underwriter's liability for partial losses is determined on the basis of a percentage of the value insured.

Conference Rate Agreements.— The foregoing list of considerations is certainly formidable. It indicates the composite character of a marine premium and shows the importance of accumulating experience along many lines to serve as a basis for properly judging any one of the numerous propositions that may be offered to an underwriter. Small wonder, therefore, that the number of skillful underwriters in the comparatively new American marine insurance market is so limited. Fire insurance, it is true, involves equally numerous rate factors, but the nature of the business is such — risks being stationary and subject almost altogether to local conditions — that all can be handled scientifically under a system of schedule rating applied through some central bureau of an Underwriters' Association, of which practically all companies are members. Fire insurance rates, in other words, are determined, applied and enforced by all the companies acting in unison. In marine insurance, however, rate-making by agreement is the exception and not the rule. It is practiced only where a given trade operates under fairly uniform and stable conditions, or where a group of companies have acquired the business so thoroughly as to make entrance of a competitor extremely difficult.

Thus, in the cotton and burlap business, and the grain and lumber traffic on the Great Lakes, groups of underwriters have managed to effect arrangements for the recommendation and charging of uniform rates, the representatives of the companies

meeting periodically for the purpose. A similar object, as was explained in a previous chapter, is also served by the Atlantic Inland Association, American Schooner Association, Provincial Underwriters' Association, the Yacht Association, the Steam Schooner Agreement (Pacific Coast), and the Postal Insurance and Tourist Insurance Underwriters' Conference, and until recently by the American Hull Underwriters' Association for the insurance of various fleets of vessels. Such coöperation, if properly conducted and if free from any motive of charging extortionate rates, is to be commended. Most underwriters regret the past inability of the companies to coöperate more fully in the matter of rates. Coöperation leads to the stability of rates, strengthens the underwriters financially by avoiding cut-throat competition, brings about a better supervision of both the underwriting business as well as commercial practices, and tends to eliminate unfair discrimination between shippers and vessel owners. It may also be added that merchants and shippers are not concerned so much with the mere size of the rate as they are with the fact that rates may be unduly competitive, unstable, and discriminatory in character.

APPENDIX I

RECOMMENDATIONS OF THE COMMITTEE ON THE MERCHANT MARINE AND FISHERIES

(*House of Representatives*)

In its investigation of marine insurance in the United States your committee has examined exhaustively into the functions, present status, and legislative needs of this branch of insurance. All evidence leads to the conclusions that a strong and independent national marine insurance institution is an absolute necessity to a nation's foreign trade equipment, that such an institution does not exist in the United States to-day, and that it is imperative to adopt ways and means to correct the present impossible situation if this country is to meet the strenuous international rivalry that the new era is certain to inaugurate. There can be no doubt, judging from the manner in which our competitors are now seeking to undermine this branch of underwriting, that marine insurance will be used, as probably never before, as a national commercial weapon for the acquisition and development of foreign markets. Failure to act now in strengthening our marine insurance facilities and placing them in an independent position free from foreign control, can not be regarded otherwise than as the neglect of a duty and an opportunity. The loss of the present rich opportunity will soon be bitterly regretted, but it will be too late to undo the mischief.

Marine insurance is more than a fundamental agency of commerce, and its importance extends beyond the ordinary service of protecting property and credit. Its use as a competitive weapon in international trade has been demonstrated to your committee in many ways. From this viewpoint, the advantages of possessing strong, independent underwriting facilities are undeniable. Their significance is fully discussed in the first chapter of the accompanying report, and a restatement is therefore unnecessary.

In view of the strategic importance of marine insurance in the upbuilding of foreign trade and a merchant marine, your committee regrets to report that American interests have largely lost their grip on this type of underwriting. Probably no other vital branch of American commerce has passed so extensively under foreign control. (See Chaps. II and III of the accompanying report for a detailed statement of the facts.) In ascertaining the true status of the business the committee was handicapped by the absence of public records, and accordingly found it necessary to submit a detailed questionnaire, under date of August 1, 1919, to all American and foreign companies transacting marine insurance in the United States. The purpose of this questionnaire was to ascertain the extent of consolidation among the companies; the degree of coöperation between underwriters

through conferences, associations, reinsurance pools, and other methods of affiliation; the extent of foreign ownership and control of American companies; the amount and ultimate destination of reinsurance; the proportion of the premium income from marine insurance derived by each company from (1) hull and freight insurance, (2) cargo insurance, (3) builders' risk insurance, (4) coastwise and inland traffic, and (5) traffic in the foreign trade; and the reasons for not emphasizing insurance in any one or more of these five categories. Replies were received, under oath, from practically all companies, and much additional information was acquired through public hearings and through a voluminous correspondence.

In its combined effect, the information obtained by the committee from all these sources presents a showing which is anything but gratifying to those who wish to see the United States in the forefront of international shipping and trade. In fact, the situation is an impossible one and must not be allowed to continue. Only 62 direct-writing American companies participated in ocean marine insurance during 1918, while six additional companies confined their activities to inland and coastwise waters. But of these companies only a limited number transacted the bulk of the business, two companies receiving nearly one-fourth of the total net marine premium income, and 10 nearly two-thirds. Thirty-six of the companies, or about one-half of the total number, received only 8 per cent of the total net marine premium income obtained by all the companies. Moreover, nearly one-fifth of the direct-writing American companies were found to be foreign owned or very closely allied by having directors or leading stockholders resident abroad. Approximately two-thirds of the marine insurance written in the United States was found to be controlled by foreign underwriters. The great majority of American companies frankly reported that they did not emphasize hull and builders' risk insurance, a very large proportion of these forms of marine insurance being exported directly to the foreign market without appearing in any of the records on this side. American companies place approximately one-half of all their reinsurance with foreign underwriters, while the reinsurance placed by United States branch offices of foreign admitted companies with American companies is only about one-half of the reinsurance placed by American companies with foreign admitted and non-admitted companies. Your committee is also convinced that foreign interests are making a determined effort right now to undermine American marine insurance, such as it is, with a view to reducing it to still smaller proportions.

The reasons for foreign control on so extensive a scale were fully developed during the committee's hearings and were also indicated by many of the replies to the committee's questionnaire. Briefly enumerated, British companies, in particular, are favored by the following factors: A world market of long development, a broader spread of business and broader reinsurance facilities, freedom to combine or to form communities of interest, permission to write numerous kinds of insurance, ease with which American insurance may be exported abroad, a much smaller tax burden, a smaller overhead charge, and dependable support of home merchants and vessel owners. (See Chap. III of the accompanying report for a discussion of these factors.) Your committee regrets to report that there is an

appalling absence of such favorable factors with respect to American underwriters. They lack a wide spread of business and adequate reinsurance facilities, are handicapped by restrictive State legislation which opposes combination for coöperative purposes and denies permission to transact numerous lines of insurance, are burdened with excessive taxation levied according to wrong principles, and, for various reasons, do not seem to enjoy the same whole-hearted support of home merchants and vessel owners, or their brokers, as is so characteristic of the commercial interests of certain foreign countries. Your committee also feels that the serious legislative burdens and restrictions confronting American companies are entirely unnecessary and are largely traceable to a short-sighted policy, continued during many years and dictated by local desires, which views marine insurance as a purely State matter rather than the National institution that it really is.

Your committee has given much thought to available ways and means of bettering conditions. It has reached the conclusion that the subject must be approached from at least three directions, and collective assistance along all these lines is necessary. The remedy lies partly in (1) self-help on the part of American companies through coöperative action, especially in the formation of a comprehensive insurance bureau for reinsurance purposes, (2) Federal assistance and (3) State help through the removal of unnecessary and paralyzing legislative restrictions.

As the investigation progressed it became increasingly apparent to the committee that adequate reinsurance facilities were essential to a successful national marine insurance institution, and that the absence of such facilities constituted one of the great handicaps to American underwriters. Accordingly, the committee suggested to all American companies the desirability of creating a reinsurance bureau or exchange, composed of American companies and open to all who are willing to conform to reasonable requirements. Such a bureau is now in process of formation, and the committee is hopeful that a satisfactory arrangement will soon be successfully launched for both hull and cargo insurance. Numerous meetings have been held between the committee and underwriting interests, and between the representatives of the various companies. In a project of such dimensions there are many problems that must be met and that require time for their solution. At present the companies have ranged themselves into two groups, one freely expressing a desire to go ahead, and the other, composed mainly of companies whose business associations with foreign representatives have been of long standing, showing some hesitancy, probably because the proposed arrangement would involve some sacrifice. This twofold grouping is quite natural and was expected, and the committee's statement is not offered in a spirit of criticism. Your committee has not only urged both groups to complete the formation of their plans, but has counseled cooperation between all American companies, irrespective of their group affiliations. A comprehensive insurance bureau, the committee believes, will be a big step in the right direction. Representing a union of many companies, it will make possible a united and intelligent action which will command the respect of foreign interests. It will greatly enlarge the reinsurance facilities of the American market, will

widen the spread of risk, will have a steadying effect upon the whole business, and will draw into marine insurance much additional capital.

If American companies are willing to coöperate for the national good in the manner indicated, your committee believes that the Federal Government should reciprocate by coöperating with the bureau. To this end the committee believes that the Federal Government should go out of the marine insurance business, and that all departments of the Government which now place insurance with private interests, and, in one important instance, with private interests abroad, should give the same to the bureau if the rates are approximately the same as those charged elsewhere. Only in this way can existing marine insurance capital be encouraged, and new capital attracted to the business. The United States Shipping Board's large business should be utilized in the interest of a national marine insurance institution, if this can be done without material loss to the board. National interests require much more than a mere solution of the Shipping Board's temporary problems, i. e., the Shipping Board's enormous equity in vessels should be utilized for the permanent welfare of marine insurance in this country. Your committee is happy to state that American companies have expressed a willingness to take over the Shipping Board's insurance on a cost basis, i. e., the members of the proposed bureau are neither to incur a loss nor to make a profit. This proposition, it should be said, is now being formulated in detail. Certain companies have suggested to the committee that such a cost-basis proposition will be agreeable since it will be a "distinct advantage to them to have a record of all Shipping Board vessels and of their captains, engineers, and mates, to enable them more intelligently to make rates on cargoes and on the hulls when taken over by private interests." It has also been suggested that the experience gained from the handling of the Government's business "will enable American underwriters to write insurance more intelligently than the foreign market and to create an American hull market capable of handling insurance on hulls flying the American flag, thus keeping the business in this country." As the Shipping Board sells its vessels, it is believed that the proposed plan will assist in placing American companies in a position to retain a large share of the values thus sold, with the result that the companies will greatly enlarge their volume and spread of business and thus relatively reduce their overhead expense.

In addition to the foregoing, your committee believes that the Federal Government may be of further assistance in several respects, and desires to recommend the following:

(1) That marine underwriters should be assured of the legality of combinations and associations designed to facilitate reinsurance or to extend underwriting activities to foreign countries. A surprisingly large number of underwriters expressed themselves to the committee as fearful of the legal consequences that might attach to the creation of such associations or combinations. To this end, it will be advisable, and even if unnecessary can do no harm, to free all such coöperative efforts from the possible operation of the Sherman and Clayton Antitrust Acts.

(2) That the Federal 1 per cent tax on marine insurance premiums be repealed. There should be no taxes on such insurance except on net profits.

(3) That legislation be enacted for the incorporation, on a liberal basis, of reinsurance companies in the District of Columbia.

(4) That a liberal marine insurance law be enacted for the District of Columbia. This recommendation was heartily supported before the committee by the Association of Marine Underwriters of the United States, chiefly on the ground that it would serve as a model for duplication in the various States.

(5) Your committee has also had its attention called by many underwriting interests to the peculiar status of marine adjusters in this country as contrasted with their quasi-judicial position in other countries. Abundant evidence was offered to show that the existing system is productive of serious irregularities. The committee feels that the question of whether adjusters should have any business connection with either brokers or underwriters is worthy of further investigation.

While much can be accomplished along the lines suggested above, there remain for consideration the legislative disabilities imposed by the several States. These are very serious and were bitterly opposed by underwriters appearing before the committee. They were a unit in recommending (1) the removal by the States of restrictions on the kinds of insurance (other than life insurance) which may be transacted by any one American company; (2) changing the system of taxing gross premiums to taxation on net profits; (3) revision of the insurance laws of the several States, which are often conflicting and which apparently were drawn primarily with regard to the regulation of fire rather than marine insurance; (4) greater liberality with reference to American companies seeking to enter the foreign field, especially with reference to recognition of foreign deposits in the financial statements of the companies, and (5) removal of restrictions against permitting groups of companies to unite, under proper regulations, to form companies or associations for the purpose of assuming the reinsurance needed by the group, or to undertake operations in foreign countries. Your committee is in hearty accord with all these recommendations. But the difficulty is that the Federal Government has no jurisdiction over these matters. It may seem, therefore, that the Federal Government need not interest itself in this phase of the problem. The committee, however, felt that it should approach the difficulty in the only way possible, viz., through direct appeal to the properly constituted authorities of the several States. Accordingly, the legislative disabilities referred to were summarized and embodied in a communication which was submitted jointly by the committee and the United States Shipping Board, under date of December 19, 1919, to the governors and insurance commissioners of all the States. In this communication special attention was called to the essentially national and international character of marine insurance and the fact that "the immediate situation requires that the legislative policy of the several States should not run counter to the needs of the Nation as a whole." Replies have been received from nearly all marine States, and the response was excellent. The recommendations, were heartily indorsed, coöperation was promised, and in a number of cases a request was made for specific suggestions or a draft of the desired legislation.

In concluding its report, your committee desires to state that its recommendations are based largely on the assumption that American companies will coöperate and seek to help themselves through the creation of an insurance bureau. Should this assumption prove wrong, an entirely different situation will, of course, present itself. Present conditions, as already stated, are impossible and cannot be allowed to continue. While the committee favors marine insurance conducted by private interests, it cannot be unmindful of present woefully unsatisfactory conditions. The national welfare must be the first consideration. Should the contingency arise that American companies will fail or refuse to coöperate on a comprehensive scale, then your committee is decidedly of the opinion that the Government should remain in the marine insurance business even to the extent of greatly enlarging its operations. Your committee is certain that its position in this respect is understood by the companies because it has been emphasized to them repeatedly and earnestly.

(Signed) FREDERICK R. LEHLBACH, *Chairman,*
GEORGE W. EDMONDS,
CARL R. CHINDBLOM,
DAVID H. KINCHELOE,
LADISLAS LAZARO,

Subcommittee on Miscellaneous Business of the Committee on Merchant Marine and Fisheries.

APPENDIX II

(LETTER SUBMITTED BY THE SUBCOMMITTEE ON THE MERCHANT MARINE AND FISHERIES AND THE UNITED STATES SHIPPING BOARD TO GOVERNORS AND STATE INSURANCE COMMISSIONERS.)

The undersigned desire to emphasize the urgent necessity of freeing American marine insurance from serious disabilities imposed by many of the States. Marine insurance, unlike other forms of insurance, is essentially national and international in character. Its necessity for the successful maintenance of a large merchant marine and a growing foreign trade is universally recognized. But independence of action in these two important fields requires that this nation have a strong marine insurance institution, free from foreign control and capable of serving independently and fully the national interest. American shipowners and merchants must be prepared to meet the competition of other nations, and to this end should not be handicapped by the absence of marine insurance facilities at home, while foreign nations use their well-developed underwriting facilities to comb out profits and to control directly and indirectly many of the leading lines of international commerce.

An extensive investigation by the undersigned shows American marine insurance to be significant chiefly in the number of companies engaged rather than in their importance and stability. Of the 63 direct-writing American companies participating in ocean marine insurance, eight are foreign controlled and at least five more very sympathetically associated. Of the uncontrolled companies, approximately one-fifth derive 96 per cent of their total net premium income from insurance other than marine, one-half at least 90 per cent, two-thirds at least 80 per cent, and three-fourths at least 70 per cent. Excluding the ten leading companies, all the remaining uncontrolled American companies received during 1918 only 10 per cent of their net premium income from marine insurance.

On the total marine insurance originating in the United States at least two-thirds is controlled by non-admitted foreign companies or by the branch offices of admitted foreign companies, and only one-third by American companies. At least 20 per cent of all marine insurance originating within the United States is exported directly abroad to be placed with non-admitted underwriters or with the home offices of admitted foreign companies. In the case of American hull insurance at least 50 per cent is thus exported, and much the same situation also exists in the case of builders' risk insurance.

Moreover, owing to the absence of a domestic market sufficiently large to assure a proper spread of risks through reinsurance, many American companies are compelled to place a very substantial part of their reinsurance with foreign underwriters, and to a very large extent with underwriters not admitted to transact business within the

United States. But this reinsurance, it should be noted, goes abroad with very little being given to American companies in exchange. With reference to hull insurance, particularly, the overwhelming majority of American companies report that they do not emphasize this branch of the business because of its unprofitableness, and because the competition of companies located in foreign countries and the facility with which owners and brokers export marine insurance to such countries preclude any hope of success.

The data contained in the accompanying report will substantiate further the facts as here related. Even at this time the undersigned have every reason to believe that a well-directed competitive campaign is now being waged by foreign underwriters with a view again to reducing American marine insurance to the insignificant position of pre-war years.

From a national viewpoint the existing situation is anything but desirable. There is no justification for needlessly allowing tens of millions of dollars of premiums to flow to the foreign underwriting market. American underwriters are fully alive to the situation and desire to make a change. Yet the prospect of improvement seems slight unless the several States see fit to free American underwriters from needless burdens and restrictions. Considering these in order, the undersigned desire to make the following recommendations:

(1) Removal by the States of restrictions on the kinds of insurance (other than life insurance) which may be transacted by American companies. Foreign competing companies have the privilege of writing many forms of insurance, and have found this privilege a great source of strength. In recent years there has been a steady absorption by British companies of other liability, casualty, and workmen's compensation companies through actual amalgamation or some form of community of interest. But whatever the method, the motive is the same, viz., an extension of business, a smaller overhead charge, a reduced outlay along many lines, and an ability to secure the support and accommodate the full insurance demand of large concerns. American marine insurance companies are barred from writing casualty and compensation forms of insurance, and protection and indemnity insurance. They are almost a unit in supporting this recommendation.

(2) Changing the system of taxing gross premiums to taxation on net profits. This is the British system and is just, whereas the taxation of gross premiums is neither scientific nor equitable, and has nothing to support it except ease of collection. A hull insured for $100,000 at 5 per cent in the United States pays a tax on the premium of approximately $200, against about $25 in England. Gross premium taxation has created a real disability for American companies, whereas the subsitution of a tax on net profits would do much toward placing them on an equal footing with their foreign competitors. Moreover, a premium written may end in a loss, without, however, any consideration being shown under a gross premium tax.

(3) Revision of the insurance law of the several States, which is often conflicting, and which apparently was drawn primarily with regard to the regulation of fire rather than marine insurance. Foreign competitors are under no such disability. American marine

insurance companies are a unit in recommending that steps be taken to secure greater uniformity in State legislation with reference to marine insurance, with a view to obviating statutory conflicts and a needless multiplicity of expensive regulations.

(4) Greater liberality with reference to American companies seeking to enter the foreign field directly, or which may have found it necessary to reinsure in foreign countries in order to secure a proper spread of risk. Due recognition should be given to the American company in its financial statements as regards (1) deposits required to be made in foreign countries in order to do business there, and (2) sums owing to it from reinsurers abroad.

(5) No obstacles should be placed in the way of permitting groups of American companies to unite, under proper regulations, to form companies, associations, or pools for the purpose of assuming the reinsurance needed by the group, or to undertake operations in foreign countries. Among the greatest handicaps to American marine insurance companies have been the absence of sufficient reinsurance facilities in this country and the heavy reinsurance placed abroad with comparatively little reciprocity in this respect from foreign underwriters. Combination and working coöperation between underwriters are fostered abroad. This gives the advantage of one overhead charge. It facilitates the wide spread of business. It also gives great financial strength and comity of action.

The foregoing recommendations are offered in the hope that it may be possible in the national interest to secure comity of action on the part of the proper authorities in the several States. This nation now has a large merchant marine and prospects for a growing foreign trade. But we must not be blind to the fact that the immediate future will be a time of intense international rivalry for commercial position, and in this competitive contest marine insurance will assume a very important rôle. Nothing should be left undone which will legitimately attract new capital into the marine insurance business, or will encourage the capital already invested to attempt greater things. The immediate situation requires that the legislative policy of the several States shall not run counter to the needs of the nation as a whole. It is with this hope that the aforementioned recommendations are respectfully submitted.

Respectfully yours,

For the Subcommittee on the Merchant Marine and Fisheries.

.....

Chairman.

For the United States Shipping Board.

.....

Chairman.

APPENDIX III

SAMPLE MARINE INSURANCE APPLICATION

Application for Open Policy.

To the ..... Company.

Insurance is wanted by .....
on account of .....
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Loss, if any, payable to .....
for $.....
to be insured at and from .....
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on .....
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valued at .....
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on board any good Steamer or Steamers,.....
.....

This Company not to be liable for more than $.....per any one vessel, or conveyance, at one time, unless otherwise agreed upon.

It is understood that either party is at liberty to cancel this Policy at any time, on giving.....(.....) days' written notice to that effect, which is not, however, to prejudice any risk then pending.

It is also agreed that the subject matter of this insurance be warranted by the assured free from loss or damage arising from capture, seizure, detention, any attempt thereat, the consequences thereof, or the direct or remote consequences of any hostilities; or arising from the acts of any government or people whatsoever (ordinary piracy excepted) or in consequence thereof, whether on account of any illicit or prohibited trade, or any trade in articles contraband of war or the violation of any port regulation, or otherwise. Also free from loss or damage resulting from measures or operations incident to war, whether before or after the declaration thereof.

Proofs of loss to be authenticated by the Agent of the Company, if there be one at the place where such proofs are taken; otherwise by the Correspondent of the National Board of Marine Underwriters, or by some other recognized Insurance Authority.

This Company's usual form of Policy to be issued, and all endorsements to be made thereon in conformity with the conditions thereof of vessels and amounts from time to time, as shall be reported by the assured.

All risks to be reported as soon as known, and amounts declared as soon as ascertained.

The Company to be entitled to premium on all shipments covered hereby whether reported or not; but should assured fail to report any such shipments, or to pay premium or premium note when due, then the policy as to all subsequent shipments shall at the option of the Company become null and void.

Philadelphia, ...

APPENDIX IV

COPY OF LLOYD'S FORM OF POLICY

Be it known that

as well in own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make assurance and cause and them and every of them to be insured, lost or not lost, at and from

S. G.
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upon any kind of Goods and Merchandises, and also upon the Body, Tackle, Apparel, Ordnance, Munition, Artillery, Boat and other Furniture, of and in the good Ship or Vessel called the

whereof is Master, under God, for this present voyage, or whosoever else shall go for Master in the said Ship, or by whatsoever other Name or Names the same Ship, or the Master thereof, is or shall be named or called, beginning the adventure upon the said Goods and Merchandises from the loading thereof aboard the said Ship
upon the said Ship, etc.,
and shall so continue and endure during her Abode there, upon the said Ship, etc.; and further, until the said Ship, with all her Ordnance, Tackle, Apparel, etc., and Goods and Merchandises whatsoever shall be arrived at

upon the said Ship, etc., until she hath moored at Anchor Twenty-four Hours in good Safety, and upon the Goods and Merchandises until the same be there discharged and safely landed; and it shall be lawful for the said Ship, etc., in this Voyage to proceed and sail to and touch and stay at any Ports or Places whatsoever
without Prejudice to this Insurance. The said Ship, etc., Goods and Merchandises, etc., for so much as concerns the Assured by Agreement between the Assured and Assurers in this Policy, are and shall be valued at

Touching the Adventures and Perils which we the Assurers are contented to bear and do take upon us in this Voyage, they are, of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints, and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said Goods and Merchandises and Ship, etc., or any part thereof; and in case of any Loss or Misfortune, it shall be lawful to the Assured, their Factors, Servants and Assigns, to sue, labor, and travel for, in, and about the Defense, Safeguard and Recovery of the said Goods and Merchandises and Ship, etc., or any part thereof, without Prejudice to this Insurance; to the Charges whereof we, the Assurers, will contribute, each one according to the Rate and Quantity of his sum herein assured. And it is especially declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the Insurers, that this Writing or Policy of Assurance shall be of as much Force and Effect as the surest Writing or Policy of Assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London.

Warranted nevertheless free of capture, seizure and detention, and the consequences thereof, or of any attempt thereat, piracy excepted, and also from all consequences of hostilities or warlike operations, whether before or after declaration of war.

And so we the Assurers are contented, and do hereby promise and bind ourselves, each one for his own part, our Heirs, Executors, and Goods, to the Assured, their Executors, Administrators, and Assigns, for the true Performance of the Premises, confessing ourselves paid the Consideration due unto us for this Assurance by the Assured at and after the Rate of

IN WITNESS whereof, we the Assurers have subscribed our Names and Sums assured in

N. B.— Corn, Fish, Salt, Fruit, Flour, and Seed are warranted free from Average, unless general, or the Ship be stranded; Sugar, Tobacco, Hemp, Flax, Hides, and Skins are warranted free from Average under Five Pounds per Cent.; and all other Goods, also the Ship and Freight, are warranted free from Average Under Three Pounds per Cent., unless general, or the Ship be stranded.

APPENDIX V

SPECIMEN HULL POLICY

American Hull Policy 1917 Form

..... Insurance Company

No. .....

BY THIS POLICY OF INSURANCE

.....

Loss, if any, payable to ..... *For account of* .....

Do make insurance and cause ..... *or order,*

To be insured lost or not lost, to the amount of .....

Amount Insured, $..... *Dollars*

At and from the .....*Day of* .....19.....

Until the .....*Day of* .....19.....

(*Beginning and ending with Greenwich Mean Time*).

But Warranted as follows:—

Upon the body, tackle, apparel, stores, ordnance, munitions, artillery, boats, and other furniture, boilers and machinery of the Steamship called the .....S.S. or by whatsoever name or names the said Vessel is or shall be named or called; beginning the adventure upon the said Vessel, &c., as above, and so shall continue and endure during the period aforesaid, as employment may offer, in port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades whatsoever and wheresoever, under steam or sail; with leave to sail with or without pilots, to tow and be towed, and to assist vessels and / or craft in all situations and to any extent, and to go on trial trips. With liberty to discharge, exchange and take on board goods, specie, passengers, and stores, wherever the Vessel may call at or proceed to, and with liberty to carry goods, live cattle, &c., on deck or otherwise, but warranted free of any claim in respect of deck cargo. Including all risks of docking, undocking, changing docks, or moving in harbor and going on or off gridiron or graving docks as often as may be done during the currency of this Policy.

The said Ship, &c., for so much as concerns the Assured, by agreement between the Assured and Assurers in this Policy, are and shall be valued at as follows:

Hull, Tackle, apparel, furniture, &c. .... $.....

Boilers, machinery, &c., and everything connected therewith ..... $.....

Donkey boilers, winches, cranes, windlasses, steering gear, and electric light apparatus, shall be deemed to be part of the hull and not part of the machinery. Refrigerating machinery and insulation appertaining thereto not covered unless expressly included in this Policy, or unless the property of the owners of the Vessel.

Premium
$.....
Rate...%

THE INSURERS to be paid in consideration of this insurance ..... Dollars, being at the rate of .....per cent.

"Warranted that the amount insured for account of the Assured and / or their managers on Disbursements, Commissions and / or similar interests "policy proof of interest" or "full interest admitted" or on excess or increased value of Hull or Machinery however described shall not, except as indicated below, exceed 15% of the insured valuation of the Vessel, but the assured may in addition thereto effect "policy proof of interest" or "full interest admitted" insurance on any of the following interests.

Premiums (reducing or not reducing monthly) to any amount actually at risk, and

Freight and / or Chartered Freight and / or Anticipated Freight and / or Earnings and / or Hire or Profits on Time Charter and / or Charter for series of voyages for any amount not exceeding in the aggregate 25% of the insured valuation of the Vessel; and if the actual amount at risk on any or all of such interests shall exceed such 25% of the insured valuation of the Vessel, the Assured and / or their managers may, without prejudice to this warranty, insure whilst at risk the excess of such interests reducing as earned."

Provided always that a breach of this warranty shall not afford underwriters any defense to a claim by mortgagees or other third parties who may have accepted this policy without notice of such breach of warranty, nor shall it restrict the right of the Assured and / or their managers to insure in addition General Average and / or Salvage Disbursements whilst at risk.

TOUCHING THE ADVENTURES AND PERILS which we, the said Assurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Counter-Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes and Peoples, of what nation, condition or quality soever, Barratry of the Master and Mariners, Explosions, Riots, or other causes of what-

soever nature arising either on shore or otherwise, causing Loss of or injury to the Property hereby insured, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Ship, &c., or any part thereof. And in case of any Loss or Misfortune, it shall be lawful for the Assured, their Factors, Servants, and Assigns, to sue, labor, and travel for, in, and about the Defence, Safeguard, and Recovery of the said Ship, &c., or any part thereof, without prejudice to this Insurance to the Charges whereof the Assurers will contribute according to the Rate and Quantity of the sum herein assured. And it is expressly declared and agreed that no act of the Insurer or Insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

THIS INSURANCE ALSO SPECIALLY TO COVER (SUBJECT TO THE FREE OF AVERAGE WARRANTY) LOSS OF, OR DAMAGE TO HULL OR MACHINERY, THROUGH THE NEGLIGENCE of Master, Charterers, Mariners, Engineers, or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the owners of the Ship, or any of them, or by the Manager, Masters, Mates, Engineers, Pilots, or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the steamer.

And it is further agreed, that IF THE SHIP HEREBY INSURED SHALL COME INTO COLLISION with any other Ship or Vessel, and the Assured or Charterers shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship hereby insured, we, the Assurers, will pay the Assured or Charterers such proportion of such sum or sums so paid as our subscriptions hereto bear to the value of the Ship hereby Insured. And in cases where the liability of the Ship has been contested with the consent in writing of a majority of the Underwriters on the hull and / or machinery (in amount) we will also pay a like proportion of the costs thereby incurred or paid; but when both Vessels are to blame, then, unless the liability of the Owners or Charterers of one or both of such Vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of CROSS-LIABILITIES as if the Owners or Charterers of each Vessel had been compelled to pay to the Owners or Charterers of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision; and it is further agreed that the principles involved in this clause shall apply to the case where both Vessels are the property, in part or in whole, of the same Owners or Charterers, all questions of responsibility and amount of liability as between the two Ships being left to the decision of a single Arbitrator, if the parties can agree upon a

single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the Managing Owners or Charterers of both Vessels, and one to be appointed by the majority (in amount) of Underwriters interested in each Vessel; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above, to be final and binding. PROVIDED ALWAYS that this clause shall in no case extend to any sum which the Assured or Charterers may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbors, wharves, piers, stages, and similar structures, consequent on such collision, or in respect of the cargo or engagements of the Insured Vessel, or for loss of life, or personal injury. And provided also that in the event of any claim being made by Charterers under this clause they shall not be entitled to recover in respect of any liability to which the owners of the Ship, if interested in this Policy at the time of the Collision in question, would not be subject nor to a greater extent than the Shipowners would be entitled in such event to recover.

And it is further agreed that in the event of salvage, towage, or other assistance being rendered to the Vessel hereby insured by any Vessel belonging in part or in whole to the same Owners or Charterers, the value of such services (without regard to the common ownership of the Vessels) shall be ascertained by arbitration in the manner above provided for under the Collision Clause, and the amount so awarded so far as applicable to the interest hereby insured shall constitute a charge under this Policy.

GENERAL AVERAGE AND SALVAGE CHARGES PAYABLE in accordance with York-Antwerp Rules, 1890, if so provided for in the contract of affreightment. As regards matters not provided for in the York-Antwerp Rules, 1890 (when the contract of affreightment provides for such rules), and also when the contract of affreightment does not provide for such rules, General Average and salvage charges shall be payable in accordance with the laws and usages of the United States. Provided always that when an adjustment according to the laws and usages of the port of destination is properly demanded by the owners of the cargo, General Average shall be paid in accordance with same.

No claim shall be allowed in respect of scraping or painting the Vessel's bottom except as provided in Rule of Practice VIII of the Association of Average Adjusters of the United States.

Grounding in the Panama Canal or in the Suez Canal or in the Manchester Ship Canal or its connections, or in the River Mersey above Rock Ferry Slip, or in the River Plate (above Buenos Aires) or its tributaries, or in the Danube, Demerara, or Bilbao River, or on the Yenikale or Bilbao Bar, shall not be deemed to be a stranding.

AVERAGE PAYABLE ON EACH VALUATION separately or on the whole, without deduction of thirds, new for old, whether the average be particular or general.

In no case shall Underwriters be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this Policy.

IN ASCERTAINING WHETHER THE VESSEL IS A CONSTRUCTIVE TOTAL LOSS the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

In the event of total or constructive total loss, no claim to be made by the Underwriters for freight, whether notice of abandonment has been given or not.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY THIS POLICY IS WARRANTED FREE FROM PARTICULAR AVERAGE UNDER 3 PER CENT., OR UNLESS AMOUNTING TO $4,850, but nevertheless when the Vessel shall have been stranded, sunk, on fire, or in collision with any other Ship or Vessel, Underwriters shall pay the damage occasioned thereby, and the expense of sighting the bottom after stranding shall be paid, if reasonably incurred, even if no damage be found.

THE WARRANTY AND CONDITIONS AS TO AVERAGE UNDER 3 PER CENT. TO BE APPLICABLE TO EACH VOYAGE as if separately insured, and a voyage shall be deemed to commence at one of the following periods to be selected by the Assured when making up the claim, viz.: at any time at which the Vessel (1) begins to load cargo or (2) sails in ballast to a loading port. Such voyage shall be deemed to continue during the ensuing period until either she has made one outward and one homeward passage (including an intermediate ballast passage, if made) or has carried and discharged two cargoes, whichever may first happen, and further, in either case, until she begins to load a subsequent cargo or sails in ballast for a loading port. When the Vessel sails in ballast to effect damage repair such sailing shall not be deemed to be a sailing for a loading port although she loads at the repairing port. In calculating the 3 per cent. above referred to, particular average occurring outside the period covered by this Policy may be added to particular average occurring within such period provided it occur upon the same voyage (as above defined), but only that portion of the claim arising within such period shall be recoverable hereon. The commencement of a voyage shall not be so fixed as to overlap another voyage on which a claim is made on this or the preceding Policy.

SHOULD THE VESSEL AT THE EXPIRATION OF THIS POLICY BE AT SEA, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the Underwriters, be held covered at a pro rata monthly premium to her port of destination.

SHOULD THE VESSEL BE SOLD OR TRANSFERRED TO OTHER OWNERSHIP, then, unless the Underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the Vessel has cargo on board and has already sailed from her loading port, or is at sea in ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A pro rata daily return of premium shall be made.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, this Policy is warranted free of capture, seizure, arrest, restraint, or detainment, and the consequences thereof, or of any attempt thereat (piracy excepted) and also from all consequences of hostilities or warlike operations, whether before or after declaration of war.

To RETURN { per cent. net for each uncommenced month if it be mutually agreed to cancel this Policy. / per cent. net for each consecutive days the Vessel may be laid up in port:— } and arrival

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A period in port falling between two insurances to be allowed pro rata on each, underwriters on each insurance agreeing to pay their pro rata proportion of the Return due.

IN THE EVENT OF ACCIDENT whereby loss or damage may result in a claim under this Policy, NOTICE SHALL BE GIVEN TO THE UNDERWTITERS, where practicable, prior to survey, so that they may APPOINT THEIR OWN SURVEYOR IF THEY SO DESIRE; and whenever the extent of the damage is ascertainable, the majority (in amount) of the Underwriters may take or may require the Assured to take tenders for the repair of such damage. In cases where a tender is accepted by or with the approval of Underwriters, the Underwriters will make an allowance at the rate of 30 per cent. per annum on the insured value for the time actually lost in waiting for tenders. IN THE EVENT OF THE ASSURED FAILING TO COMPLY WITH THE CONDITIONS OF THIS CLAUSE 15 PER CENT. SHALL BE DEDUCTED FROM THE AMOUNT OF THE ASCERTAINED CLAIM.

HELD COVERED in case of any breach of warranty as to cargo, trade, locality, or date of sailing, provided notice be given, and any additional premium required be agreed immediately after receipt of advices of breach or proposed breach by Owners.

1. Where the Assured has paid, or is liable for, any General Average contribution and the contributory value is greater than the insured value, the amount recoverable under this Policy shall be only in the proportion that the amount insured hereunder bears to the contributory value and where the contributory value has been reduced by a

Particular Average for which these Assurers are liable, the amount of Particular Average Claim under this Policy shall be deducted from the amount insured under this Policy in order to ascertain what share of the contribution is recoverable from these Assurers; the extent of the liability of these Assurers for salvage shall be computed on the same principle.

2. In event of non-payment of premium thirty days after attachment this Policy may be cancelled by the Assurers upon five days' written notice being given the assured.

3. No recovery for a Constructive Total Loss shall be had hereunder, unless the expense of recovering and repairing the vessel shall exceed the insured value.

In Witness Whereof, the said ..... INSURANCE COMPANY has caused this Policy to be signed by its President at ....., ..., but it shall not be valid until countersigned by ....., Managers.

.....*President.*

Countersigned the ..... day of 19

.....*Managers.*

APPENDIX VI

LAKE HULL
1918

SAMPLE LAKE HULL POLICY FORM

No. .....

..... INSURANCE COMPANY .....

Sum Insured, $.....

BY THIS POLICY OF INSURANCE

DO MAKE INSURANCE and cause
loss, if any, payable to
to be insured for an amount not exceeding the sum of Dollars,
at and from the day of , 191 , at (Chicago time) until the
day of , 191 , at (Chicago time).
Rate, %

Upon the Hull, Tackle, Apparel, Furniture, Stores, Outfit, Fittings, Electric Light Plant, including Dynamo, and also the Engines, Boilers and Machinery of all kinds, of the good ship called the
or by whatsoever name or names the said ship is or shall be named or called.

Rate...%
Premium, $.....

The said ship, etc., for so much as concerns the assured, by agreement between the assured and assurers in this Policy, are and shall be valued at as follows:
Hull, Tackle, Apparel, Furniture, Stores, Outfit, Fittings $
Engines, Propeller Wheel or Wheels, Boilers and Machinery, Electric Light Plant and Dynamo, $ $
Dollars
without any further accounting to be given by the assured to the assurers for the same.

This Policy is agreed to cover the Vessel insured, as employment may offer, in port or at sea, in docks and

graving docks, and on ways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades, whatsoever and wheresoever, under steam or sail, with leave to sail with or without pilots, to tow and assist vessels or craft in all situations, and to be towed, and to save or aid, and to attempt to save or aid life, person or property, also to take in and / or retain cargo on board, and / or to move in port as may be required during the winter season.

With liberty to discharge, exchange and take on board goods, specie, passengers and stores, wherever the vessel may be, call at, or proceed to, and with liberty to carry goods, live cattle, etc., on deck or otherwise, and liable for contribution towards the jettison of property from on deck, if contribution therefor be claimable from ship.

It is Warranted that metal vessels shall not be engaged in navigation between November 30th, midnight (Chicago time) and April 15th, midnight (Chicago time) and wooden vessels shall not be engaged in navigation between November 15th, midnight (Chicago time) and April 30th, midnight (Chicago time), but in the event of the vessel being on a voyage on midnight the 30th day of November, Chicago time (if a metal vessel), or on the 15th day of November, Chicago time (if a wooden vessel), this Policy to continue at pro rata of the season rate until arrival at destination, provided notice thereof be given by the Assured to the Agents of the Assurers prior to midnight of the 30th day of November, Chicago time (if a metal vessel) or midnight of the 15th day of November, Chicago time (if a wooden vessel), the term "voyage" as used in this clause being intended to mean only a continuous trip from one port of loading to one port of discharge; or, in case of the vessel going light, a continuous trip from her port of departure to a port of loading call or otherwise; and any breach of this warranty shall vitiate this insurance during the continuance of such breach only.

It is hereby understood and agreed that in consideration of an additional premium at the rates specified below, Steel Steamers are held covered if sailing between noon, April 1st and midnight, April 15th, also between midnight, November 30th and midnight, December 12th, but warranted by the Assured that notice in writing be given by the Assured to the Agents of the Assurers prior to the commencement of any sailings as specified below:

Navigation between noon, April 1st, and midnight, April 15th, pro rata daily navigating rate from time of sailing to April 15th, midnight.

Sailings after midnight, November 30th (not below Montreal):

It is Warranted sailing on last voyage from last loading port not later than December 5th.. ½%
It is Warranted sailing on last voyage from last loading port not later than December 9th.. ¾%

It is Warranted sailing on last voyage from last loading port not later than December 12th. 1%
Port to port on one Lake only; light for the purpose of laying up, sailing not later than December 12th ..... ¼%

Notwithstanding the above should the vessel be at sea at midnight, November 30th, the Assured is not released from the warranty to pay pro rata of the season rate from midnight, November 30th, until arrival at destination as provided in this Policy.

It is Warranted by the Assured to navigate only the waters, bays, harbours, rivers, canals and other tributaries of the Great Lakes, not below Lake Erie, but including Niagara River.

It is Warranted free from Particular Average under three per cent., unless the ship be stranded, sunk, burnt, on fire, or in collision, or the damage be caused by contact with any substance other than water, but in the event of any claim under this Policy (other than claims for Total Loss or Constructive Total Loss) the Assurers to pay only the excess of $500 each accident.

Notwithstanding the foregoing, and in substitution of the clause immediately preceding, the assurers on all vessels sailing during April or December only to be liable for the excess of three per cent. each accident on the entire value of $ in respect of all claims arising from damage by ice, except claims for total or constructive total loss.

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The Warranty and conditions as to average to be applicable to each voyage; a continuous trip from port of loading to final port of discharge, or, in case of the vessel going light, a continuous trip from port of discharge to port of loading, to constitute a voyage, but this clause in no way releases the Assured from liability to bear the first $500 each accident.

Subject to the foregoing Average payable without deduction "new for old" whether the average be particular or general, so far as regards metal or composite vessels, but on wooden vessels one-third to be deducted.

Average payable on each valuation as if separately insured or on the whole.

Subject to the foregoing General Average and all claims hereunder, payable as per American Lake Adjustment, and in the event of salvage, towage, or other assistance being rendered to the vessel hereby insured by any vessel belonging in part or in whole to the same Owners, it is hereby agreed that the value of such services (without regard to the common ownership of the vessels) shall be ascertained by Arbitration in the manner hereinafter provided for under "Collision Clause," and the amount so awarded, so far as is applicable to the interest hereby insured, shall constitute a charge under this Policy.

In adjusting and determining any and all losses, damages and amounts under this Policy the valuation stated herein shall be considered the value of the Vessel.

It is understood and agreed that the fees of the Assured, his Superintendent, and the Assured's Officers, Manager, and / or other servants are not collectible under this Policy.

This insurance also specially to cover (subject to the above free of average warranty) loss of, or damage to the hull or machinery, through the negligence of master, mariners, engineers or pilots, or through explosions, bursting of boilers, breaking of shafts, or through any latent defect in the machinery or hull, provided such loss or damage has not resulted from want of due diligence by the owners of the ship or any of them, or by the manager.

Touching the adventures and perils which the said Assurers are content to bear and do take upon themselves by this policy, they are of the inland seas and water, enemies, pirates, rovers, thieves, fires, explosions, collisions, jettisons, barratry of the master or mariners, and all other perils, losses and misfortunes that have or shall some to the hurt, detriment or damage of said Vessel or any part thereof.

And in case of any loss or misfortune it shall be deemed lawful and necessary for the Assured, their factors, servants and assigns, to sue, labour and travel for in and about the defense, safeguard and recovery of the said ship, etc., or any part thereof, without prejudice to this insurance; to the charges whereof the said Assurers will contribute according to the rate and quantity of the sum herein assured. No abandonment shall in any case be effectual unless notice thereof be made in writing to the Agents of the Assurers, nor unless the amount of the loss exceeds seventy-five per cent. of the combined value in this Policy, viz., $. And it is especially declared and agreed that no acts of the insurer or insured shall be considered as a waiver or acceptance of the abandonment.

It is Warranted free from capture, seizure and detention, and the consequences of any attempt thereat, and all other consequences of hostilities, piracy excepted.

To return per cent. net if not under average for every fifteen consecutive days the metal Vessels may be laid up in port or in dock between April 15th midnight and November 30th midnight (Chicago time), and wooden Vessels between May 1st midnight and November 15th midnight (Chicago time), during such period the Vessel being at the risk of the Underwriters and arrival.

Metal Vessels to return per cent. net for every thirty days of unexpired time between April 15th midnight and November 30th midnight (Chicago time), and wooden Vessels between May 1st midnight and November 15th midnight (Chicago time), provided it be mutually agreed to cancel this Policy and arrival.

Should the Vessel be sold or transferred to other ownership, then, unless the Underwriters agree in writing to

such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the Vessel has cargo on board and has already sailed from her loading port, or is at sea in ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A pro rata daily return of premium shall be made.

Collision Clause.

And it is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the ship hereby insured, we, the Assurers, will pay the Assured such proportion of such sum or sums so paid, subject to a deduction of $500 for each accident, as our subscriptions hereto bear to the value of the ship hereby insured. And in cases where the liability of the ship has been contested with the consent, in writing, of a majority of the Underwriters on the hull and / or machinery (in amount), we will also pay a like proportion of the costs thereby incurred or paid; but when both vessels are to blame, then, unless the liability of the owners of one or both of such vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of cross liabilities as if the owners of each vessel had been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured in consequence of such collision. It is understood and agreed, however, that, in the event of claim under particular average clause also being involved with collision liability claim in the same accident, only one deductible average of $500 to apply.

And it is further agreed that the principles involved in this Clause shall apply to the case where both Vessels are the property, in part or in whole, of the same Owners, all questions of responsibility and amount of liability as between the two ships being left to the decision of a single arbitrator, if the parties can agree upon a single arbitrator, or failing such agreement, to the decision of arbitrators, one to be appointed by the Managing Owners of both Vessels, and one to be appointed by the majority in amount of the Underwriters interested in each Vessel. The two arbitrators chosen to choose a third arbitrator before entering upon the reference. The terms of the Arbitration Act of 1889 to apply to such reference, and the decision of such single, or any two of such three arbitrators, appointed as above, to be final and binding.

Provided always that this clause shall in no case extend to any sum which the Assured may become liable to pay, or shall pay for removal of obstructions under statutory powers, consequent on such collision, or in respect of the cargo or engagements of the Insured Vessel, or for loss of life or personal injury.

It is also agreed that liability under the Collision Clause shall extend to collision with rafts.

LEGAL REPRESENTATION CLAUSE.

Two-thirds (in amount) of the assurers on hull and machinery shall have the option of naming the attorneys who shall represent the assured in the prosecution or defense of any litigation between the assured and third parties concerning any claim, loss or interest covered by this Policy, and shall have the direction of such litigation.

TENDER CLAUSE.

In the event of accident, whereby loss or damage may result in a claim under this Policy, prompt notice thereof with full and accurate details, shall be given in writing by the Assured to the Underwriters' Surveyor, R. Parry-Jones, or other surveyor appointed by Underwriters in his stead, and, when required by such surveyor, the vessel shall be forthwith docked by the assured for survey and/or repair, such surveyor also having the right to veto in connection with the place of repair proposed. The Underwriters or their surveyor may take or may require the Assured to take tenders for the repair of damage claimable under this Policy, and in cases where a tender is accepted with the approval of the Underwriters, the Underwriters will make an allowance at the rate of 30 per cent. per annum on the insured value for the time actually lost in waiting for tenders. In the event of the Assured failing to comply with the conditions of this clause, or making arrangements for the repairs without consulting and securing the consent of the aforementioned surveyor, or to give the required notice of survey within 30 days of each accident, 15 per cent. will be deducted from the amount of the ascertained claim.

The log book of the Vessel shall be properly kept, and shall contain full information of every disaster met with and be at all times available for examination by the Underwriters' surveyor.

COMPASSES CLAUSE.

The representative of the Underwriters shall have the right to board the vessel hereby insured at any time for the purpose of ascertaining whether the Compasses are in order, and, if the Compasses are found to be out of order, they shall immediately be adjusted at the expense of the owner.

WINTER MOORING CLAUSE.

It is Warranted to have the Vessel insured under this Policy properly moored in a safe place and under conditions satisfactory to the representatives of the Underwriters.

It is Warranted no claim owing to vessel being moored in the outer harbour of Buffalo after close of navigation unless mooring specially approved by Underwriters, and additional premium paid if required.

LIMITATION OF DATE OF REPAIR AND CLAIM CLAUSE.

It is Warranted by the Assured to have all repairs executed within fifteen months from the date of the accident, and claims presented to the Underwriters within the same period, except collision liability and salvage and General Average claims.

Any Casualty to be Immediately Reported to R. Parry-Jones, Rockefeller Building, Cleveland, Ohio.

The Insurers to be paid in consideration of this insurance Dollars, being at the rate of per cent., payable in cash, and in case the said premium shall not be paid within ninety days after the date of the attachment of this Policy, this Company shall have the right to cancel same, and such cancellation shall take effect within ten days after the mailing by this Insurance Company of Notice of Cancellation signed by , General Agent, addressed to the assured and the payee named herein at his or their last known address, but such a proportional part of any such pre-

mium that shall have been earned up to the date of such cancellation, shall thereupon remain and become immediately due and payable.

Losses shall be payable in sixty days after proof of loss or damage covered by this Policy, and of the amount thereof, and of the interest of the assured, shall be made and presented at the office of this Company (the amount of premium on this Policy, if unpaid, and all other indebtedness due this Company being first deducted).

In Witness Whereof, the said ..... COMPANY has caused this Policy to be signed by its President, and attested by its Marine Secretary, at its office in the City of ..... and State of ....., and this Policy is made and accepted upon the above expressed conditions, but shall not be valid unless countersigned by General Agent of the said Company, at Chicago, Illinois.

Countersigned at Chicago, this day of , 191

.....General Agent.

.....

APPENDIX VII

SPECIMEN CARGO POLICY

THE ..... INSURANCE COMPANY

..... *ON ACCOUNT OF* .....

No. .....

CARGO.

In case of loss to be paid in funds current in the United States, to .....

Do make Insurance, and cause ..... to be insured, lost or not lost, at and from upon all kinds of lawful goods and merchandises, laden or to be laden on board the good whereof is master for this present voyage or whoever else shall go as master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called.

Beginning the adventure upon the said goods and merchandises, from and immediately following the loading thereof on board of the said vessel, as aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed as aforesaid. AND it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this insurance. The said goods and merchandises, hereby insured, are valued (premium included) at

Touching the adventures and perils which the said INSURANCE COMPANY is contented to bear, and takes upon itself in this voyage, they are of the *seas, fires, jettisons, barratry of the master and mariners,* unless the assured on cargo be in part owner of the vessel, and all other perils, losses and misfortunes (illicit or contraband trade excepted in all cases), that have or shall come to the hurt, detriment or damage of the said goods and merchandises, or any part thereof. AND in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, his or their factors, servants and assigns, to sue, labor and travel for, in and about the defence, safeguard and recovery of the said goods and merchandises, or any part thereof, without prejudice to this insurance; nor shall the acts of the assured or insurers, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of abandonment; to the charges whereof, the

said Insurance Company will contribute according to the rate and quantity of the sum herein insured: having been paid the consideration for this insurance by the assured, or his or their assigns, at and after the rate of

And in case of loss, such loss to be paid in thirty days after proof of loss, proof of interest, and adjustment exhibited to the insurers (the amount of the Note given for the premium, if unpaid, and all sums due to the Company from the assured when such loss becomes due being first deducted, and all sums coming due being first paid or secured to the satisfaction of the insurers), but no partial loss or particular average shall in any case be paid, unless amounting to *five per cent.* PROVIDED ALWAYS, and it is hereby further agreed, that if the said assured shall have made any other insurance upon the property aforesaid, prior in day of date to this Policy, then the said INSURANCE COMPANY shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property hereby insured. And the said INSURANCE COMPANY shall return the premium upon so much of the sum by them insured as they shall be by such prior insurance exonerated from. And in case of any insurance upon the said porperty subsequent in day of date to this policy, the said INSURANCE COMPANY shall nevertheless be answerable for the full extent of the sum by them subscribed hereto without right to claim contribution from such subsequent insurers. And shall accordingly be entitled to retain the premium by them received in the same manner as if no such subsequent insurance had been made. Other insurance upon the property aforesaid, of date the same day as this policy, shall be deemed simultaneous herewith; and the said INSURANCE COMPANY shall not be liable for more than a ratable contribution in the proportion of the sum by them insured to the aggregate of such simultaneous insurance. IT IS ALSO AGREED, that the subject matter of this insurance be warranted by the assured free from loss or damage caused by strikers, locked out workmen or persons taking part in labor disturbances, or arising from riot, civil commotion, capture, seizure, or detention or from any attempt thereat, or the consequences thereof, or the direct or remote consequences of any hostilities, arising from the acts of any government, people, or persons whatsoever (ordinary piracy excepted), whether on account of any illicit or prohibited trade, or any trade in articles contraband of war, or the violation of any port regulation, or otherwise. Also free from loss or damage resulting from measures or operations incident to war, whether before or after the declaration thereof.

In the event of risk of war being assumed by endorsement under this policy, the assured warrant not to abandon in case of capture, seizure or detention, until after the condemnation of the property insured; nor until ninety days after notice of said condemnation is given to this Company. Also warranted not to abandon in case of

blockade, and free from any expense in consequence of detention or blockade; but in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

Memorandum. It is also agreed, that bar, bundle, rod, hoop and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, brooms, wicker-ware and willow (manufactured or otherwise), straw goods, salt, grain of all kinds, rice, tobacco, Indian meal, fruits (whether pr served or otherwise), cheese, dry fish, hay, vegetables and roots, paper, rags, hempen yarn, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature, are warranted by the assured free from average, unless general; hemp, tobacco stems, matting and cassia, except in boxes, free from average under *twenty per cent.*, unless general; and sugar, flax, flax-seed and bread, are warranted by the assured free from average under *seven per cent.*, unless general; and coffee, in bags or bulk, pepper, in bags or bulk, free from average under *ten per cent.*, unless general. Profits warranted free from claim for general average, but subject to the same per centum of partial loss as if the insurance were on goods. In case a total loss of profits be claimed, the Underwriters to be entitled to a credit of the same per centum of salvage as if the insurance were on goods, and in case of contribution in General Average for any portion of the goods at the customary sound value, this Company to be free from claim for loss on such portion. Not liable for loss on or damage to any goods shipped on deck.

Warranted by the assured free from damage or injury from dampness, change of flavor, or being spotted, discolored, musty or mouldy, unless caused by actual contact of sea water with the articles damaged, occasioned by sea peril. In case of partial loss by sea damage to dry goods, cutlery, or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise as far as practicable. Not liable for leakage on molasses or other liquids, unless occasioned by stranding or collision with another vessel.

Warranted by the assured that this insurance shall not enure directly or indirectly to the benefit of the carrier or other bailee, by stipulation in bill of lading or otherwise, and any breach of this warranty, and any act or agreement by the assured, prior or subsequent hereto, whereby any carrier or party liable for or on account of loss of or damage to any property insured hereunder, is given the benefit of any insurance effected thereon, shall render this policy of insurance null and void.

In case of any agreement by the assured, prior or subsequent hereto, whereby any right of recovery of the assured for loss of or damage to any property insured hereunder, against any person or corporation, is released, impaired or lost, which would on acceptance of abandonment or payment of a loss by this Company, have enured to its benefit, but for such agreement or act, this Company shall not be bound to pay any loss, but its right to retain or recover the premium shall not be affected.

Warranted by the assured, that the assignment of this policy or of any insurable interest therein, as also that the subrogation of any right thereunder to any party, without the consent of this Company, shall render the insurance affected by such assignment or subrogation, void.

In Witness Whereof, the President or Vice-President of the said INSURANCE COMPANY hath hereunto subscribed his name, and this Policy is made and accepted upon the above express condition, the day of A. D. one thousand nine hundred and

.....PRESIDENT.

1—Warranted that no claim shall be made in General Average arising from the loss or jettison of Merchandise from on deck.

2—Warranted that in case of partial loss on merchandise this Company shall have notice of such damage within eight days after the landing of such merchandise.

3—All risks to be reported as soon as known and amounts declared as soon as ascertained.

4—This Policy shall be deemed continuous, but it is understood that either party is at liberty to cancel this Policy at any time, on giving thirty days' written notice to that effect, which is not, however, to prejudice any risk then pending.

5—Proofs of loss to be authenticated by the Agent of this Company, if there be one where such proofs are taken; otherwise by a Correspondent of the National Board of Marine Underwriters, if there be one where such proofs are taken, but if neither is represented, then by some other recognized Insurance Authority.

6—The sound value at the port or place of destination outward is to be deemed not to exceed the purchasing price at the shipping port, and ten per cent. added thereto, exclusive of duty and freight.

7—The Company to be entitled to premium on all risks covered hereby, whether reported or not; but should assured fail to report any such risks, or to pay premium or premium note when due, then the policy as to all subsequent risks shall at the option of the Company become null and void.

APPENDIX VIII

SPECIMEN OF MARINE INSURANCE CERTIFICATE

... Insurance Company

$\_\_\_\_\_$ F No. _____

(PLACE AND DATE) _____

This is to Certify, That on _____ this Company insured, under Policy made for _____, _____ Dollars in Gold on _____, valued at _____, shipped on board of the _____, at and from _____

It is hereby understood and agreed that, in case of loss, such loss is payable to the order of _____ on surrender of this Certificate, which represents and takes the place of the Policy, and conveys all the rights of the Original Policy-holder, (for the purpose of collecting any claims for loss or damage), as fully as if the property were covered by a special policy direct to the holder hereof, and is free from any liability for unpaid premiums.

Not valid unless countersigned under especial authority given for such purpose.

Countersigned

_____

_____

President

IT IS ESPECIALLY AGREED, that all claims for loss or damage under this Certificate shall be adjusted for approval to one of the Representatives, as per list on back of this Certificate, to whom immediate notice of any casualty must be given.

Claims are to be adjusted according to the usages at Lloyds, but subject to the conditions of the policy.

Messrs. W. E. WEBSTER & CO., 7 Lime St., Square, London, England, are the Attorneys of the Company, to whom service of process can be made.

Notice. To conform with the Revenue Laws of Great Britain, in order to collect a claim under this Certificate, it must be stamped within five days after its receipt in the United Kingdom.

MARKS AND NUMBERS	CLAUSES
	Warranted not to cover the interest of any partnership corporation, association or person, insurance for whose account would be contrary to the Trading with the Enemy Acts, or other statutes or prohibitions of the United States.
	Warranted free of Capture, Seizure or Detention as per Policy.

B/L No.

Rate of Premium, _____ *Amount of Premium*, $_____

APPENDIX IX
SPECIMEN FREIGHT POLICY

(FREIGHT)

By the ——— Insurance Company. [No. ———]

ON ACCOUNT OF

In case of loss to be paid in funds current in the United States, or in the City of New York to

Do make Insurance, and cause

to be insured, at and from

upon the freight of all kinds of lawful goods and merchandises, laden or to be laden on board the good ——— called the ———
whereof is master for this present voyage, or whoever else shall go for master in the said vessel, or by whatever other name or names the said vessel, or the master thereof, is or shall be named or called.

Beginning the adventure upon the said freight, from and immediately following the loading thereof on board of the said vessel, at as aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed at as aforesaid. AND it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this insurance. The said freight hereby insured, is valued at

Sum Insured,

$

Warranted by the assured not to be loaded in excess of her registered tonnage with either lead, marble, stone, coal or iron; and if loading with grain, warranted to be loaded under the inspection of the Surveyor of the Board of Underwriters, and his certificate as to the proper loading and sea-worthiness obtained.

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Proofs are taken.

[E.] Warranted by the assured free from claims on account of civil commotions, riots, or by the acts of officers whether before or after declaration of war.

63.] Warranted by the assured not to use any of the

237

Premium

$

Proof of loss to be authenticated by the Agent of the Company, if there be one at the place such

Touching the adventures and perils which the said _____ Insurance Company is contented to bear, and takes upon itself in this voyage, they are of the *seas, men-of-war, fires, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, reprisals, takings at sea, arrests, restraints and detainments of all kings, princes or people of what nation, condition or quality soever, barratry of the master and mariners,* and all other perils, losses and misfortunes, whereby the said freight, or any part thereof, shall be lost. AND in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, factors, servants and assigns, to use, labor, and travel for, in and about the defence, safeguard and recovery of the said goods and merchandises, or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; to the charges whereof, the said Insurance Company will contribute according to the rate and quantity of the sum herein insured, as far forth as the said freight will be liable for the same, having been paid the consideration for this insurance, by the assured or assigns, at and after the rate of

And in case of loss, such loss to be paid in thirty days after proof of loss, and proof of interest in the said _____ (the amount of the Note given for the premium, if unpaid, being first deducted), but no partial loss or particular average shall in any case be paid, unless amounting to *five per cent.* PROVIDED ALWAYS, and it is hereby further agreed, That if the said assured shall have made any other assurance upon the premises aforesaid, prior in day of date to this policy, then the said _____ INSURANCE COMPANY shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said _____ INSURANCE COMPANY shall return the premium upon so much of the sum by them assured, as they shall be by such prior assurance exonerated from. AND in case of any insurance upon the said premises, subsequent in day of date to this policy, the said _____ INSURANCE COMPANY shall nevertheless be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. Other insurance upon the premises aforesaid, of date the same day as this policy, shall be deemed simultaneous herewith; and the said _____ INSURANCE COMPANY shall not be liable for more than a ratable contribution to the proportion of the sum by them insured to the aggregate of such simultaneous insurance. IT IS ALSO AGREED that the property be warranted by the assured free from any charge, damage or loss, which may arise in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war. AND LASTLY, it is agreed, that if the above vessel, upon a regular survey, should thereby be declared unseaworthy, by reason of her being unsound or rotten, or incapable of prosecuting her voyage on account of her being unsound or rotten, then the assurers shall not be bound to pay their subscription on this Policy.

Warranted not to abandon in case of capture, seizure, or detention, until after condemnation of the property insured; nor until ninety days after notice of said condemnation is given to this Company. Also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention or blockade, but in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

In witness whereof, the President or Vice-President of the said _____ Insurance Company hath hereunto subscribed his name, and the sum insured, and caused the same to be attested by their Secretary, in New-York, the _____ day of _____ one thousand nine hundred and

If the voyage aforesaid shall have been begun and shall have terminated before the date of this policy, then there shall be no return of premium on account of such termination of the voyage.

In all cases of return of premium, in whole or in part, *one half per cent.*, upon the sum insured, is to be retained by the assurers.

$

account of capture, seizure, detention or destruction by or arising from hostile flowers, other persons acting in the name of belligerents, or in pursuing warlike operations

Ocean Islands, nor to load Lime under Deck.

APPENDIX X

SPECIMEN BUILDERS' RISK POLICY

FOR ACCOUNT OF WHOM IT MAY CONCERN

Loss, if any, payable to ..... or order,
..... Dollars ($.....)
At and from .....day of.....19.....noon, Chicago time,
o. .....day of.....19.....noon, Chicago time,
on Hull, Materials, Machinery, &c., of .....
to cover all risks whilst building at .....
Including risks of launching, fitting out and all risks of every kind as specified in the Institute Clauses for Builders' risks as below, and until delivered to and accepted by owners. This Insurance also includes all risks of fire whilst in shops, and / or workshops, and all risks of trial and / or other trip or trips, and of docking trip or trips, and of delivery trip or trips, in tow or otherwise. It being understood that delivery shall be made at the port where the construction is completed, or to be held cove ed at a premium to be arranged, provided previous notice be given. Also to cover transportation of material by rail and / or water from yard to yard and / or vice versa.

Should a claim arise under this policy it is hereby declared and agreed that the value of said vessel (including Hull, Materials, Tackle, Apparel, Furniture, Machinery and Boilers, and including Plans, Patterns, Moulds, &c., if any) shall be the aggregate amount that may be insured on said vessel at the time of the accident occurring.

Liberty to extend this insurance is required at 5c per cent. additional premium per month, provided notice be given before expiration of policy.

INSTITUTE CLAUSES FOR BUILDERS' RISKS

This Insurance is also to cover all risks, including fire, while under construction and / or fitting out, also in Buildings or Workshops, including materials in yards and docks of the assured, or on quays, pontoons, craft, etc., and all risk while in transit to and from the works and / or the vessel wherever she may be lying, also all risks of loss or damage through collapse of supports or ways from any cause whatever, and all risks of launching and breakage of the ways.

This insurance is also to cover all risks of trial trips as often as required. and all risks whilst proceeding to and returning from the trial course.

With leave to proceed to and from any wet or dry docks, harbours, ways, cradles, and pontoons during the currency of this policy.

In case of failure of launch, underwriters to bear all subsequent expenses incurred in completing launch.

Average payable irrespective of percentage, and without deduction of one-third, whether the Average be particular or general.

General Average and Salvage charges as per foreign custom, payable as per foreign statement, and/or per York-Antwerp rules, if required; and in the event of salvage, towage, or other assistance being rendered to the Vessel hereby insured by any Vessel belonging in part or in whole to the same owners, it is hereby agreed that the value of such services (without regard to the common ownership of the Vessels) shall be ascertained by Arbitration in the manner hereinafter provided for under "Collision Clause," and the amount so awarded, so far as applicable to the interest hereby insured, shall constitute a charge under this policy.

In the event of deviation to be held covered at an additional premium to be hereafter arranged.

To cover while building all damages to hull, machinery, apparel, or furniture, caused by settling of the stocks, or failure or breakage of shores, blocking or staging, or of hoisting or other gear, either before or after launching and while fitting out.

With leave to increase value.

It is also agreed that any changes of interest in the property hereby insured shall not affect the validity of this policy.

And it is expressly declared and agreed that no acts of the Insurer or Insured, in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

This Insurance also specially to cover loss of or damage to the hull or machinery, through negligence of Master, Mariners, Engineers or Pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the Machinery or Hull, or from explosions, riots, or other causes of whatever nature, arising either on shore or otherwise, howsoever, causing loss of or injury to the property hereby insured, provided such loss or damage has not resulted from want of due diligence by the Owners of the Ship, or any of them, or by the Manager, and to cover all risks incidental to navigation, or in graving docks.

Collision Clause.

And it is further agreed that if the Ship hereby insured shall come into collision with any other Ship or Vessel, and the Assured shall in consequence thereof become liable to pay, and shall pay by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the Ship

hereby insured, we, the assurers, will pay the assured such proportion of such sum or sums so paid as our subscriptions hereto bear to the value of the Ship hereby insured. And in cases where the liability of the Ship has been contested, with the consent, in writing, of a majority of the underwriters on the hull and / or machinery (in amount), we will also pay a like proportion of the costs thereby incurred or paid; but when both Vessels are to blame, then, unless the liability of the Owners of one or both of such Vessels becomes limited by law, claims under the Collision Clause shall be settled on the principle of CROSS LIABILITIES, as if the owners of each Vessel had been compelled to pay to the owners of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the assured in consequence of such collision.

And it is further agreed that the principles involved in this clause shall apply to the case where both Vessels are the property, in part or in whole, of the same owners all questions of responsibility and amount of liability as between the two Ships being left to the decision of a single Arbitrator, if the parties can agree upon a single Arbitrator, or failing such agreement, to the decision of Arbitrators, one to be appointed by the managing owners of both Vessels, and one to be appointed by the majority, in amount, of Underwriters interested in each Vessel; the two Arbitrators chosen to choose a third Arbitrator before entering upon the reference. The terms of the Arbitration Act of 1889, to apply to such reference, and the decision of such single, or of any two of such three Arbitrators, appointed as above, to be final and binding.

This clause shall also extend to any sum which the Assured may become liable to pay, or shall pay, for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages, and similar structures, or for loss of life or personal injury consequent on such collision.

PROTECTION AND INDEMNITY CLAUSE.

And we further agree that if the Assured shall become liable to pay and shall pay any sum or sums in respect of any responsibility, claim, demand, damages, and / or expenses or shall incur any other loss arising from or occasioned by any of the following matters or things during the currency of this policy in respect of the ship hereby insured, that is to say:—

> Loss or damage in respect of any other ship or boat or in respect of any goods, merchandise, freight or other things or interests, whatsoever, on board such other ship or boat caused proximately or otherwise by the ship insured in so far as the same is not covered by the running down clause hereto attached.

Loss of or damage to any goods, merchandise, freight or other things or interests whatsoever other than as aforesaid whether on board the said steamship or not, which may arise from any cause whatever.

Loss of or damage to any harbour, dock, graving or otherwise, slipway, way, gridiron, pontoon pier, quay, jetty, stage, buoy, telegraph cable, or other fixed or movable things whatsoever, or to any goods or property in or on the same, howsoever caused.

Any attempted or actual raising, removal or destruction of the wreck of the said ship or the cargo thereof, or any neglect or failure to raise, remove or destroy the same.

Any sum or sums for which the Assured may become liable or incur from causes not hereinbefore specified, but which are or have heretofore been absolutely or conditionally recoverable from or undertaken by the Liverpool and London Steamship Protective Association, Limited, and / or North of England Protection and Indemnity Association, but excluding loss of life and personal injury.

We will pay the Assured such proportion of such sum or sums so paid, or which may be required to indemnify the Assured for such loss, as our respective subscriptions bear to the policy value of the Ship hereby insured, and in case the liability of the Assured has been contested with the consent in writing of the majority of the Underwriters on the Ship hereby insured, in amount, we will also pay a like proportion of the costs which the Assured shall thereby incur or be compelled to pay.

Notwithstanding the foregoing, this Policy is:—

(A) Warranted free from any claim arising directly or indirectly under Workmen's Compensation or Employers Liability Acts and any other Statutory or Common Law liability in respect of accidents to workmen.

(B) Warranted free of capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat (piracy excepted), and also from all consequences of hostilities or warlike operations whether before or after declaration of war.

(C) Warranted free of loss or damage caused by strikers, locked out workmen or persons taking part in labour disturbances or riots or civil commotions.

This policy shall not be vitiated by any unintentional error in description of voyage or interest, or by deviation, provided the same be communicated to Assurers as soon as known to the Assured, and an additional premium paid if required.

The terms and conditions of this form are to be regarded as substituted for those of this policy (No. .....) to which it is attached, the latter being hereby waived.

APPENDIX XI

SPECIMEN PAGE OF LLOYD'S REGISTER

1 No. in Book. Official No. Code Letters.	2, 3 Steamer's Name. Material, Rig, &c. Master. Late Name if any. Special Surveys. No. of Decks, &c.	4 Register Tonnage. Gross. Under deck. Net.	5 Particulars of Classification. Character. ✠ for Special Survey. Date of last Survey.	6 Port of Survey.	7 Years last passed now expired. Equipment Letter.	7* Date when tail shaft last seen.	8 Built. When	9 By Whom Where	10 Owners.	11 Regist'd Dimensions. Deck Erections, &c. Length.	Breadth.	Depth.	12 Port of Registry. Flag.	13 Engines. No. & Dia. of Cylinders.—Stroke. Boiler Pressure. NHP=Horse power by Society's formula; RHP=power by Ship's Register. Particulars of Boilers & Furnaces. Engine Maker's Name.	14 Moulded depth. Freeboard amidships. Corresponding draught. ft. in.	15
823 KGMB	**Maumusson** SteelScK *Machefaux* *(Trawler)* 1*Dk*	249 — 68					1905	Smith's DockCo.Ld. NorthShields	O.Dahl	125·6 Q51'F21'	22·0	12·1	LaRochlle French *WB*	T.3Cy.12½",20"&34"-25" 58NHP ShieldsEng.Co.Ld.N.Shl.		✓
824 129947 HJLN	**Maun** SteelScK *W.Freshney* -14 ssFlt.No.1-10 1*Dk*	271 246 151	✠100A1 *StmTrawler* 10,12 BS3,14	Flt LMC11,10		7,12	1906 10mo *Lloyd*	Smith's DockCo.Ld. NorthShields 'sA4CP	WyreSteam TrawlingCo.Ld. (J.N.Ward&Son, *Mgrs.*)	130·6 Q72'F21'	22·0	12·2 BK7½"	Fleetwood British 3*BHCem*	T.3Cy 12½",21"&34"-25" (*s*) 180lb NB15 85RHP 1SB,3*cf*,GS45,HS1470 ShieldsEng.Co.Ld.N.Shl	13 " 0	
825 204923 KWMI	**Mauna Kea** SteelScSr *W.Freeman* *Elec.light* 2*Dks*	1566 977 940					1908	UnionIron Works S.Francisco	InterIslandSteam Nav.Co.Ld.	239·3	36·2	16·7	Honolulu Utd.States *WB*	T.3Cy.24",37½"&62"-39" 240NHP UnionIronWorks,S.Fo.		
826 77228 KQBV	**Mauna Loa** WoodScSr *C.Pedersen* (*ex*JamesSpiers) *Elec.light* 1*Dk*&*AwngDk*	851 — 536					1896	HallBros. PortBlakeley	InterIslandSteam Nav.Co.Ld.	176·8	33·9	16·1	Honolulu Utd.States	T.3Cy.15½",26"&43"-33" 106NHP FultonE.&S.B.Wrks.S.Fo.		
827 92974	**Maunaloa** SteelSc *Elec.light* *Mchy.Aft* 1*Dk*2*trB*	4952 4781 4004					1899	Chicago S.B.Co. Chicago	PittsburghS.S.Co.	430·0	50·2	24·0 *WB*	Duluth, Minn. Utd.States	Q.4Cy.17",27",42"&64"-42" 265NHP ChicagoS.B.Co.Chicago		
828 127810 TVSJ	**Maunganui** SteelTwinScSr *L.C.H.Worrall*07-11 *Elec.light* 3*Dks*(*UStl-wd*&2*nd dk ptStl*) *Ref.Mchy.* . &*Promenade dk*(*Stl-teak s*) Wireless &*Webframes*	7527 7022 4542	✠100A1 1,15 BS11,12	Ddn ✠LMC12,11	*b*†		1911 12mo *Lloyd*	Fairfield Co.Ld. Glasgow 'sA4CP *WB=Cell*	UnionS.S.Co.of NewZealand,Ld. *DBa*79'*uE*&*B*151'	430·8 *f*133'918*t**FPT*110*t*	55·7	31·2 FK&BK2"	London British 7*BHCem* *APT*140*t*	Q8Cy24½"35½"50½"&73"-45" 220lb (*r*) 1804NHP 2D&2SB,24*cf*,GS517, FD HS20400 FairfieldCo.Ld.Glasgow	34 " 0 s 9 " 6 25 " 2	
829 MGLV	**Maur** SteelScSr *J.Svensen* -11 1*Dk*	1099 962 649					1911	Trndhjms Mek.Værks. Trondhjem	Dampskakties Björn (T.Hansen, *Mgr.*)	226·4 H56*t*F29*t*	36·5	15·4	Risör Norwegian *WB*	T.3Cy.17",27½"&46"-30" 116NHP TrondhjemsMVTrondhjm		N
830 MCSW	**Mauranger** SteelScSr *P.Tronstad*06-06 1*Dk*	1024 794 628					1906	Stavanger Stöberi&Dok Stavanger	H.WestfalLarsen	225·3 Q117*t*B45*t*H16*t* F27*t*	32·1	13·3	Bergen Norwegian *WB*	T.3Cy.16",26"&43½"-30" 103NHP StavangerStöberi&Dok		N
831 119909 HBMG	**Maureen.** SteelScSr *M.Adamson* -19 ssSld.No.2-13 1*Dk*(*ptIrn*&*ptStl*)&*Webframes*	2476 2268 1576	✠100A1 2,14 BS8,14	Sld ✠LMC4,13	/	2,14	1904 10mo *Lloyd*	S.P.Austin &Son,Ld. Sunderland 'sA4CP	Marquess of Londonderry (D.N. Grimes, *Mgr.*)	310·1 P23'B60'F33' *WB=CellDBo*	44·2	20·3 FK	Sundrland British 5*BHCem* 98'*uE*&*B*36'	T.3Cy.22½",37"&61"-39" (*s*) 160lb 90lb 254NHP 2SB,6*pf*,GS112,HS4120 N.E.MarineEng.Co.Ld.Sld *f*130'664*t**FPT*96*t**APT*140*t*	22 " 10 s 3 " 11 19 " 8	

No.	Ship / Master / Particulars	Construction	Tons	Class	Port		Survey	Built	Builder	Owner	Dimensions	Port / Flag	Engines	
832 124092 HLTQ	**Mauretania** *J.C.Barr* -15 *Eleclight* *4Dks(Stl)Shelter dk(Stl-ws)* *Ref.Mchy.* *lower Orlop dk(Stl)* Sub.Sig. Wireless *in fore&after holds*	SteelQuadScSr ssLiv.No.1-12	30704 25138 12797	✠100A1 3,14 MS3,12	Liv ✠LMC BS8,13		Sa3,14 Pa3,14 sf3,12 rf3,12	1907 10mo *Lloyd*	Swan,Hunter&Wigham Richardson, Ld Newcastle 'sA&CP	CunardS.S.Co.Ld. *WB=CellDBa*	762·2|88·0|57·1 *Promenade dk452'* *Boat dk584'* FK F305' 46' *uE&B481'f125'*	Liverpool British 11*BHAsp* 4389t *DTf*	4 Steam Turbines (s) 195lb FD WllsndSlpwy.Co.Ld.Nwc. 44'546t*FPT*202t*APT*53t	60 • 9 25-1½ 36-• 3
833 33 QPBL	**Mauritania** *E.Cirino*03-07 exDonar)	IronScSr (exHogland. 1*Dk&Spar dk&3trB*	1594 1588 961					1882	Akt.Ges. "Weser" Bremen	Soc.ServizioItalo-Spagnuolo(Succ. Ed.Gerhardt&W. Lieke *Mgrs.*)	263·7|34·5|17·5 23·4	Genoa Italian *WB*	C.2Cy.34"&59"-42" 188NHP A.G."Weser,"Bremen	
834 KONL	**Mauritanie** *Lucas* -13 *Mchy.Aft*	SteelSc 1*Dk*	767 — 442					1913	Scott&Sons Bowling	MauriceCastanié	200·3|36·1|10·7 B16'Q50'F23'	Oran French *WB*	T.3Cy.13½",22½"&36"-24" 86NHP W.V.V.Lidgerwood,Gls.	
835 KONJ	— *A.Fourney* -14 (exCatherine) Wireless	SteelScSr (*Trawler*) 1*Dk*	446 — 198					1908	Blasse&fils Nantes	J.Huret	152·5|24·9|13·1	Boulogne French *WB*	T3Cy13⅛"22½"&34⅛"-24⅛" 58NHP A.Maucour&fils,Nantes	
836 113648	**Mauritius** *A.Sumner* -14	SteelScK ssHul.No.3-5,14 1*Dk*	172 166 67	✠100A1 *StmTrawler* 12,14	Hul ✠LMC5,14		12,14	1902 5mo *Lloyd*	Cook,Welt'n&Gemmell Beverley 'sA&CP	HullSteamFishing &IceCo.Ld.	108·4|21·3|11·2 BK7½" *WB=Deep tanks f13'30t*	Hull British 4*BHCem*	T.3Cy.10",17"&28"-21" (s) 200lb 45RHP 1SB,2*pf*,GS21,HS740 Amos&Smith,Hull	12 • 1
837 660 QPBD	**Maurizio** *Raggio*13-13 (exHarrovian, 1*Dk(Stl)&Spardk(Stl)* exClaverdale) *&deep framing*	SteelScSr ssMal.No 3-3,12	3318 3147 2107	✠100A1 *Spar dk* 3,13 BS1,15	Msl ✠LMC5,12	*r*	3,13	1899 2mo	Craig, Taylor&Co. Stockton A&CP	P.VialeG.B, *WB=CellDBa*104'	330·0|45·2|18·0 P69'B98'F41' 26·0 FK *uE&B36'f138'664t*	Genoa Italian 5*BHCem* *APT*57t	T.3Cy.24",38"&64"-42" (r) 160lb *150lb* NDB15 278NHP 2SB,6*cf*,GS100,HS4360 T.Richardson&Sns.Ld.Hpl.	28 • 6 5 -2½ 23 • 8
838 72960 ROHT	**Mausang** *G.H.Alcock* -15	SteelScSr (exSultan) 1*Dk2trB*	2151 1646 1044					1893	Wood, Skinner&Co. Newcastle	Indo-ChinaSteam Nav.Co.Ld.	275·6|37·6|18·5 Q132tB271tH46t F37t	London British *WB*	T.3Cy.20½",34"&56"-39" 196NHP N.E.MarineCo.Ld.Sld.	
839 92171 KHBS	**Maverick** *Carrying Petroleum in bulk* Wireless	SteelSc3MstSr 1*Dk&Awndk&* *Webframes* *Fitted for oil fuel*	1561 1632 1118					1890	Columbian DryDockCo. Baltimore	J.F.Craig	240·0|36·2|17·0 24·0	S.Frncisco Utd.States *WB*	T.3Cy.19",30"&50"-36" NB98 150NHP ColumbianDryDk.Co.,Blt.	
840 95420 KBCM	**Mavis** *J.W.James* -11	SteelPadSp	473 341 202					1888	J.Scott&Co. Kinghorn	PockettsBristol ChannelS P Co.Ld. (GJWakefield *Mg*)	210·3|26·3|. 9·4 Q7t	Swansea British	C.D.2Cy.35½"&61"-60" NB99 FD 240NHP J.Scott&Co.,Kirkcaldy	
841 133004 HVCS	**Mavisbrook** *N.H.Carlstrom*06-12	SteelScSr 1*Dk(pt Irnpt Stl)*	3152 2960 1965	✠100A1 3,14	Sws ✠LMC1,12	*v*	3,14	1912 1mo *Lloyd*	J.Blumer &Co. Sunderland 'sA&CP	SS.TregennaCo.Ld (Miller&Richards, *Mgrs.*) *WB=CellDBa*119'	332·5|48·7|21·9 P28'B101'F32' FK *uE25'f137'846tFPT*	Glasgow British 5*BHCem* 73t*APT*106t	T.3Cy.23",38"&61"-42" (s) 180lb *120lb* 284NHP 2SB,6*cf*,GS116,HS4700 N.E.MarineEng.Co.Ld.Sld	24 • 8 4 • 0 20 • 8
842 121281	**Mawhera** *W.Earl* -09 *Eleclight* (*Sand Pump and Bucket Hopper Dredger*)	SteelTwinSc ssWln.No.1-13 1*Dk(Stl)*	648 606 292	✠ A1 *Hopper Dredger* 2.14 BS2,14	Wln ✠LMC7,13		2,13	1908 10mo *Lloyd*	W.Simons &Co.Ld. Renfrew 'sA&CP	Greymouth HarbourBoard	175·2|32·1|11·9 P11'F19' FK	Wellingtn, N.Z. British 5*BHCem*	T.6Cy.13",20½"&34½"-22" 160lb (s) 141NHP 2SB,4*cf*,GS88,HS2560 W.Simons&Co.Ld.Rnf.	14 • 6 2-11½ 11 • 8
843 885	**Max** *J.R.Moreira*05-09	SteelScSr 1*Dk2trB*	241 — 116					1895	R.Holtz Harburg	C.Hoepcke jun.	131·2|22·3| 9·8 B48'F15'	Desterro Brazilian	T.3Cy.12",20"&32"-15½" NB13 41NHP OttensenerMasch.fab. (J.F.Ahrens)nr.Altona	

APPENDIX XII

COPY OF INTER-REINSURANCE AGREEMENT

MEMORANDUM OF AGREEMENT entered into by and between
(Here follow the names and addresses of a large number of companies.)

It is hereby understood and agreed that the above mentioned Companies enter into this Inter Reinsurance Contract, each with the others, covering their respective interests on all Hulls, Cargoes, Freight Lists and Charges, on all vessels located on Inland Waters of the United States, which may be insured in either of said Companies through ....., their representatives, at ....., ..., or by any of their Sub-Agents, in the territory operated and under the jurisdiction of their said representatives, ... It being understood and agreed that this agreement does not embrace any business covered by the ..... Association, nor certain lines which are not acceptable to all parties hereto.

The business written under the Inter-Reinsurance Agreement herein formed is to be apportioned as follows, to-wit:
(Here follow the names of all the companies party to the Agreement, and after each name the percentage allotted to the company.)

All Receipts, Losses and Expenses under this agreement are to be divided between said Companies by ..... in the ratios as above stated.

The maximum line contemplated under this agreement on any one venture, either on Hull, Cargo, Freight List or Charges, or on all combined, is to be ..... ($.....) Dollars, and any sum in excess of that amount is to be reinsured by ....., where and when possible and to the best advantage, immediately upon receipt of information of such over line; but should no such reinsurance be secured, it is understood and agreed that each Company party hereto, assumes its proportionate share of any such excess.

The Notes, received by each Company for premiums, shall be sent to such Company monthly with their regular accounts, and charges (less discount of ....%) pro and con shall be made in said accounts to adjust any differences that may arise between the aggregate of each Company's notes and its share of the premiums under this agreement. Any loss occurring in the collection of premium notes shall be charged back to the Companies of the agreement.

Each Company of this agreement, further binds itself to assume and pay its proportion of all costs and expenses of any suit brought against any company party hereto and arising from business written hereunder.

It is further understood and agreed that all previous agreements entered into by any of the Companies party hereto and in conflict with this agreement are hereafter, null and void from this date this agreement is put into effect, except as to business reported to and / or binding under such agreements prior to said date.

This agreement to take effect on all business for which .... receive reports on and after December ....., ..., and may be terminated at the pleasure of either party to it, by giving ..... (.....) days' notice in writing to that effect, or sooner, if by mutual consent.

In witness thereof we have hereunto subscribed our names as of the date above mentioned.

(Here follow the names and addresses of a large number of companies.)

THE ..... INSURANCE COMPANY.

By ....., *President.*

THE .....

By ....., *President.*

(Here follow the remainder of the signatures of all parties to the agreement.)

APPENDIX XIII

COPY OF REINSURANCE AGREEMENT

REINSURANCE AGREEMENT made this day of

BETWEEN THE

of the State of United States of America, (hereinafter called "the Company") and the
of (hereinafter called "the Reinsurer.")

IT IS HEREBY AGREED by and between the parties hereto as follows:

ARTICLE I

The Company agrees to cede to the Reinsurer, and the Reinsurer agrees to accept ..... tenths of the Company's first excess above the Company's own retention, but said first excess shall not exceed five times the Company's own net line, on all risks of insurance, except insurances upon or appertaining to hulls or similar interests, (including the risks of war as and when covered by the original policy) underwritten by the Company through the office of ...., the Company's marine managers (either under direct policies or by way of reinsurance).

ARTICLE II

In arriving at the amount of the excess under this reinsurance all interests insured by the Company through the office of ....., its marine managers, except insurance upon hulls or similar interests, shall be taken into account except all insurances upon duties and on freights payable upon delivery of goods (when insured in conjunction with goods) and insurances under Tourist, Floater, and Parcels Post forms of policies, and except that there shall be deducted from the gross line of the Company any amounts reinsured by special open policies or covers for specific proportions or excesses of specifically named policies of the Company and any amounts which have to be declared to other underwriters under the terms of any sharing or pooling agreement. ..... The Company's marine managers, shall be privileged to reinsure risks of the Company in other companies which they represent as agent, without violating the first surplus obligation of this agreement.

ARTICLE III

The Company shall at any time be at liberty to increase, reduce, revise or alter in any manner it may consider desirable, any reinsurance within the limits of this agreement and to credit or charge the Reinsurer for premiums due to any such alterations.

ARTICLE IV

The liability of the Reinsurer shall commence and expire simultaneously with that of the Company if not otherwise especially arranged, and such liability shall be co-extensive, co-terminous and identical with the liability of the Company. The Company may, at its option, bind the Reinsurer in cases where the Company may not desire to be liable upon a net retention as great as the amount above stated, but in all such cases the Company shall have no right to bind the Reinsurer for any sum in excess of ..... tenths of five times of the Company's net retention, and provided also that in all such cases the Reinsurer's liability shall attach only from the moment when the Company binds the Reinsurer, as shown by time stamps or written memorandum on the Company's original entry.

ARTICLE V

It is agreed that in event of the Company desiring to reduce their ordinary reserved line they shall be at liberty to do so by special outside reinsurance but all such reinsurance shall be considered as having been placed for common account jointly for the Company and the Reinsurers under this contract who shall pay their proportion of any such reinsurance premium and shall in the same manner receive their proportion of any claims collected thereunder. This clause also extends to any reinsurance to reduce loss owing to the vessel being overdue or stranded and the Company undertakes to obtain special reinsurance cover for account of the Reinsurer at the same time, and in the same proportions as the Company effect reinsurance of their own net line. It is understood that payments made by the Company on account of the Reinsurer regarding such stranded or overdue vessels will be included in the ordinary loss lists of payments and not treated as reduction of the net premium payable to the Reinsurer under this agreement.

ARTICLE VI

The Company alone will settle all claims and such settlement shall under all circumstances be binding on the Reinsurer in proportion to its participation.

The Company shall hold at the offices all original loss documents for the inspection and examination of the Reinsurer when desired.

The Reinsurer shall pay its pro rata share of all expenses connected with any resistance to negotiations concerning settlements or losses excluding however all salary charges of permanent employees.

The Reinsurer shall however be credited with its share of any reimbursements which may be made to the Company.

All loss settlements made by the Company whether under strict policy conditions or by compromise or otherwise, including *ex gratia* payments and payments on account shall be unconditionally binding upon the Reinsurer and amounts falling to the share of the Reinsurer shall be payable by them upon reasonable evidence of the amount paid on settlement of loss being given by the Company to the Reinsurer.

The Company shall have the right to draw (at once) at not less than six (6) days' sight on the Reinsurers for its proportion of any

loss where such proportion amounts to Two thousand dollars ($2,000) or more and the Reinsurers agree to honour such drafts. When drawing the Company will cable or telegraph the Reinsurer that they are doing so. Other losses shall be settled in account.

All payments becoming due from either party under this agreement shall be made in New York City funds free of exchange.

ARTICLE VII

All postal telegram cable and other similar charges in connection with the business of this contract are to be paid at the expense of the sender unless otherwise stipulated.

Declarations, alterations and cancellations of all risks attaching hereunder on usual bordereau sheets, giving particulars of voyage, interest, vessel, sum insured, retention, excesses, &c., shall be made to the Reinsurer, care of the ....., on behalf of the Reinsurer, as soon as practicable after the Company have knowledge thereof, but not later than seven days (Sundays and acknowledged holidays excepted) after receipt of original advices showing any excess. These bordereaux are to be signed by the General Agents of the Company or by a representative who shall be approved by the .....

The cessions contained by the definite and preliminary bordereaux shall be numbered consecutively and in the event of any number being missing the Reinsurer shall give the Company immediate notice thereof. The Reinsurer shall nevertheless remain liable for any cession or cessions under such missing number or numbers.

The Company undertakes to render separate definite bordereaux and declarations for war and marine business, or if they prefer writing one bordereaux only, to show the war premium in one column and the marine in another, and thus render the definite bordereaux in duplicate to the Reinsurer.

ARTICLE VIII

The Company shall pay the Reinsurer the exact commission rates received by the Company, less all brokerage and / or agency commissions paid by the Company, less all taxes of every character, nature or description, except U. S. Income and Excess Profit Taxes, and less a further .....% overwriting commission on the net premiums paid, without any allowance for State or Government taxes, and a further contingent commission of .....% on the annual net profits as herein specified.

The contingent commission shall be figured upon the net profits of the business ceded by the Company to the Reinsurer for the year ending on the ..... and for each succeeding year during the term of this agreement, but the calculation shall not be made for this and for each following year until a further twelve months have elapsed, so that all losses under cessions made in the said year, but paid in the following twelve months, shall be included. The first calculation shall therefore be made as soon as practicable after the ..... and annually thereafter upon the following basis:

THE TERMS OF CREDIT SHALL BE

(1) The net premiums (meaning thereby gross premiums less cancellation and return premiums) or reinsurances ceded.

(2) The premium reserve from the previous year.

(3) Loss reserve from the previous year.

THE ITEMS OF DEBIT SHALL BE

(A) The commission, &c., as provided herein.

(B) Losses paid during year and the twelve months following under all policies issued in the said year after deducting recoveries and salvage.

(C) Reserve for all known losses incurred under all policies issued in the said year but not paid at the end of the second year, with an additional reserve of ..... per cent. on the net premiums of all cargo and other risks (except twelve months' policies on hulls, freights, disbursements and cargo) and ..... per cent. on the net premiums of the said twelve months' policies for further probable losses. Such reserve for all known losses incurred but not paid with the foregoing additions of ..... per cent and ..... per cent. respectively to be carried forward to the credit of the next year which will be debited with the losses, be they more or less, which the said reserve and additions are estimated to cover.

(D) An allowance of ..... per cent. for the Reinsurer's management expenses.

The calculation of the profit contingent commission shall be made by the Company and after confirmation by the Reinsurer any profit contingent commission payable to the Company shall be immediately paid.

In case notice of cancellation of this agreement shall be given by either party no profit and loss statement shall be made until after the termination of all risks and settlement of all losses applying to this agreement.

ARTICLE IX

It is expressly understood and agreed that in the event of the Reinsurer being compelled to make returns to the Insurance Department of any State and consequently being obliged to pay taxes directly to such State Department on the premiums received from the Company under this agreement and for which the Company has received credit such taxes shall be refunded to the Reinsurer by the Company.

ARTICLE X

The accounts between the Company and the Reinsurer in respect to transactions under the present agreement other than the contingent profit account shall be rendered monthly by the Company to the Rein-

surer within one month after the close of each calendar month. The said accounts shall, unless some bona fide ground of dispute arise be confirmed by the Reinsurer within fifteen days after they have been rendered and the balance in account shall subject to reserve under Article XI, be paid by cheque on New York within three months after the close of the month for which the account has been rendered. No interest shall be paid on balances until they have been paid into the "Deposit" account. Omission to confirm shall not excuse non-payment nor give either party any further time for payment of any balance which may be due.

ARTICLE XI

As a security for the benefit of the Company for the due performance of the obligations of the Reinsurer under this agreement and to provide the legal reserve demanded by the Insurance Departments of the United States the Reinsurer shall at all times maintain in the hands of the Company a sum (hereinafter called the "Deposit") equal to 50 per cent. of the actual yearly (last twelve months) gross premiums less rebates and returns credited to the Reinsurer under this agreement, and whenever such Deposit in the hands of the Company belonging to the Reinsurer shall be less than such 50 per cent. the Reinsurer shall remit funds sufficient to bring the Deposit up to the required amount.

The Company will pay to the Reinsurer interest at the rate of ..... per cent. per annum on such Deposit free of United States income tax. The interest on the said Deposit shall be payable monthly to the Reinsurer.

The said Deposit shall be retained by the Company until the expiration of all reinsurances and the Reinsurer shall be entitled to delivery up of the said Deposit when all said reinsurances under this agreement have ceased, provided always that the Company shall be entitled to deduct from the said Deposit the Reinsurer's proportion of any outstanding loss or losses which shall be adjusted on final settlement of such loss or losses.

ARTICLE XII

In view of the trust reposed by either party under this agreement in the other party it is understood and agreed that the business reinsured under this agreement is the absolute property of the Company and the reinsurer binds himself not to use any knowledge of such business for its own direct or indirect benefit otherwise than contemplated in this treaty, both parties agreeing not to give any information regarding the conditions of this agreement or of the business reinsured hereunder to any other party or company.

ARTICLE XIII

It is expressly agreed and provided that if any law or regulation of the Federal or any State or local government of the United States becoming operative should render illegal the arrangements here made this agreement may be terminated immediately in whole or in part by the Company upon giving notice to the Reinsurer to such effect, pro-

vided always that the Reinsurer cannot or will not comply with such laws.

ARTICLE XIV

In the event of any difference hereinafter arising between the contracting parties with reference to any transaction under this agreement the same shall be referred to two arbitrators, who must be insurance or reinsurance managers, one to be chosen by each Company, and to an umpire chosen by said arbitrators before they enter upon arbitration, but neither of the arbitrators nor the umpire shall be in the service of either of the Companies parties to this agreement. In case of their not being able to agree as to the umpire each of the arbitrators shall name one and the decision shall be made by drawing lots.

The arbitrators and umpire shall interpret this present agreement rather as an honourable engagement than as a merely legal obligation and their decision or that of the majority of them shall be final and binding upon the contracting parties without appeal. The arbitrators and umpire are relieved from all judicial formalities and may abstain from following the strict rules of law.

In default of either party appointing any arbitrator within one month of the other party requesting it to do so the latter shall name both arbitrators, and they shall elect an umpire as above stipulated. The said term of one month however is to date from the day on which such notice is received by the opposite party.

Each party shall submit its cause to the arbitrators within one month of the decision to refer to arbitration and the arbitrators shall give their award in writing at the earliest convenient date. Any arbitration shall take place in New York unless otherwise agreed.

ARTICLE XV

All notices, bordereaux and accounts and other papers herein provided to be sent to the Reinsurer and all payments provided to be made to or by the Reinsurer shall be held to be given and made if so given and made to .....

ARTICLE XVI

This agreement shall attach on all risks accepted by and declared to the Company as provided herein by vessels sailing on and after the twentieth of September unless declared to other Reinsurers because of earlier attachment.

This agreement is unlimited as to its duration but may be terminated at any time by either party upon notice in writing to the other party of at least six months, such notice to expire at noon on any of the usual quarter days, i. e., 31st March, 30th June, 30th September and 31st of December.

The Reinsurer shall continue to participate in all insurance coming within the terms of this agreement granted or renewed by the Company during the six months aforesaid and shall remain liable until the natural expiration of the policies for its share of the losses arising out

of all insurances in force at the date of the termination of the six months' notice unless otherwise agreed.

In the event of the Reinsurer going into liquidation or suffering the loss of one-half of its paid-up capital the Company shall be entitled forthwith or at any time thereafter to determine this agreement by written notice of its intention so to do and this agreement shall stand determined as from the day mentioned in such notice.

APPENDIX XIV

"HARTER ACT"

'AN ACT relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATE OF AMERICA IN CONGRESS ASSEMBLED, That it shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he or they shall be relieved from liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect.

SEC. 2. That it shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence, properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided.

SEC. 3. That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

SEC. 4. That it shall be the duty of the owner or owners, masters or agent of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to issue to shippers of any lawful merchandise a bill of lading, or shipping document, stating, among other things, the marks necessary for identification, number of packages, or quantity, stating whether it be carrier's or shipper's weight, and apparent order or condition of such merchandise or property delivered to and received by the owner, master, or agent of the vessel for transportation, and such document shall be prima facie evidence of the receipt of the merchandise therein described.

SEC. 5. That for a violation of any of the provisions of this act the agent, owner, or master of the vessel guilty of such violation, and who refuses to issue on demand the bill of lading herein provided for, shall be liable to a fine not exceeding two thousand dollars. The amount of the fine and costs for such violation shall be a lien upon the vessel, whose agent, owner, or master is guilty of such violation, and such vessel may be libeled therefor in any district court of the United States, within whose jurisdiction the vessel may be found. One-half of such penalty shall go to the party injured by such violation and the remainder to the Government of the United States.

SEC. 6. That this act shall not be held to modify or repeal sections forty-two hundred and eighty-one, forty-two hundred and eighty-two, and forty-two hundred and eighty-three of the Revised Statutes of the United States, or any other statute defining the liability of vessels, their owners, or representatives.

SEC. 7. Sections one and four of this act shall not apply to the transportation of live animals.

SEC. 8. That this act shall take effect from and after the first day of July, eighteen hundred and ninety-three.

Approved, February 13, 1893.

APPENDIX XV

OUTLINE OF AMERICAN MARINE INSURANCE SYNDICATES

These syndicates (Syndicates "A," "B" and "C") were formed at the instigation of the Committee on Merchant Marine and Fisheries of the House of Representatives, and with the approval and coöperation of the United States Shipping Board, and were executed in behalf of the Government on June 28, 1920. Some fifty American companies will participate in Syndicates "A" and "B," whereas in the remaining syndicate (Syndicate "C") the American companies, representing at least two-thirds of the underwriting capacity, are supplemented by a number of foreign admitted companies whose participation is limited, however, to a one-third interest.

The three syndicates referred to represent a radical departure in American marine insurance practice, and their organization, it is believed, will constitute an epoch-making event in the history of American marine underwriting. They represent the first effort in our history to form a distinctly national policy in this important branch of commerce. For the first time, also, American companies have united in a comprehensive service plan for maintenance inspections and surveys, thus recognizing the importance of eliminating present waste and needless losses and costs.

Briefly outlined, the most essential features of the newly organized syndicates, excluding details of organization and routine of operation, are the following:

I. SYNDICATE A (SERVICE SYNDICATE):

1. Organized to perform, *at cost*, surveying, inspection and loss surveys for the United States Shipping Board in respect to all steel vessels owned by the Board or sold by it on a part payment basis, and to perform similar service in respect to any vessels for any other shipowners and marine underwriters upon payment of reasonable charges for such service. The Syndicate shall create and maintain an organization for inspection, and damage and loss surveys, and to advise all interested parties with respect to matters relating to inspection, repair, equipment, loading, management, operation, efficiency, safety and damage to, and salvage and loss of, vessels. It is not the intention, however, that this Syndicate is to take the place of or perform the work of a classification society. Vessels are to be inspected approximately every four months, and the maintenance inspection shall show the condition of hull, machinery, galley, crew's quarters, and all parts of the vessel.

2. Membership is limited to strictly American companies, but is open to all such companies that meet reasonable conditions of solvency and fair dealing.

3. The books and accounts of the Syndicate are always open to audit by a representative of the Shipping Board. Moreover, the Shipping Board or Emergency Fleet Corporation may designate a representative to be *ex-officio* a member of the Board of Managers of the Syndicate and who shall be privileged to attend all meetings.

4. The Shipping Board possesses the right to withdraw from the agreement on ninety days' notice prior to any expiration date. Similar right of cancellation is also given to the syndicate members.

5. The Shipping Board agrees to enter, or cause to be entered, all steel vessels owned by it, and all such vessels hereafter sold on a part payment basis, and such vessels heretofore sold as the Board can lawfully cause or require to be entered with the Syndicate. The Shipping Board also agrees that it will afford a reasonable opportunity to the surveyors or other representatives of the Syndicate to make the surveys called for, in a United States port or in such foreign port as may be agreed upon from time to time. It is also agreed that, with respect to all vessels hereafter sold, the Shipping Board will require that the purchaser shall carry out the recommendations as detailed in the Syndicate survey reports.

6. A single Board of Managers, composed of the representatives of nine Syndicate subscribers (two of whom are representatives of foreign admitted Syndicate subscribers), are to manage and conduct the affairs of all three syndicates.

II. SYNDICATE B:

1. Organized to insure all American steel steamships which the United States Shipping Board may hereafter sell to others to the full extent of the unpaid purchase price thereof, and also, to a like extent, such other American steel steamships heretofore sold by the Board as are acceptable for insurance to the Syndicate. The Syndicate is to have an underwriting capacity of not less than $2,000,000 upon a single hull. Every company subscribing to the Syndicate has allotted to it a definite percentage of every assumed risk accepted by the Syndicate underwriter. Rates of premium and policy forms may be altered as conditions require upon ten days' written notice to the Shipping Board. The liability of the companies is several and not joint.

2. Membership is limited to strictly American companies, but all such companies are acceptable if they meet reasonable standards of solvency and fair dealing.

3. The Shipping Board may terminate the arrangement upon ninety days' notice, without prejudice, however, to any risks or obligations previously assumed. A similar right of cancellation is also given to the Syndicate members.

4. The subscribing companies agree to reinsure only with strictly American companies.

5. The books of the Syndicate are at all times open to audit by a representative of the shipping board.

Since the operation of this syndicate is limited to the insurance of the Government's interest (the unpaid portion of the purchase price) in vessels sold by it, it follows that as the various installments of the unpaid purchase price are paid the Government interest in the

vessels protected by this Syndicate will decrease, while the private interest of the owners will proportionately increase. Syndicate "B" will, therefore, be a gradually diminishing Syndicate, whereas Syndicate "C" will be a growing syndicate.

III. SYNDICATE C:

1. Organized to insure all American ocean-going steel hulls when approved and accepted for marine insurance by the Syndicate managers, and owned by private persons or corporations or in which they have an insurable interest. The Syndicate has a total underwriting capacity of not less than $2,500,000 upon a single hull. The liability of all subscribers is several and not joint, each subscriber being committed in respect to each policy insured by the Syndicate underwriter for the subscribing member's pre-agreed percentage written opposite its name on the list of subscribers.

2. Membership is divided into two groups. One group, representing at least two-thirds of the amount underwritten on any risk, consists entirely of strictly American companies, that is, companies chartered under the laws of the United States or of any state thereof, domiciled therein, and not controlled by foreign interests. The second group, representing not to exceed one-third of the underwriting capacity of the Syndicate, shall consist solely of subscribing companies of foreign countries duly authorized and licensed to transact marine insurance in the United States.

3. Each Syndicate subscriber may accept additional insurance on American hulls, outside of the Syndicate arrangement, but cannot do so at rates lower than those quoted by the Syndicate. Nor can such additional insurance be reinsured in part or in whole outside of the Syndicate, unless the Syndicate declines to accept the business; nor shall such additional insurance diminish the underwriting obligations of such subscriber as a member of the Syndicate.

4. Any subscriber may, ninety days after filing written notice of its desire and intention to withdraw from said Syndicate, withdraw therefrom, without prejudice, however, to any risks or obligations previously assumed. The machinery for obtaining substitutes for any withdrawing members is fully provided for, and the same may also be said of Syndicate "B."

APPENDIX XVI

SELECTED LIST OF REFERENCES ON MARINE INSURANCE

ARNOULD, JOSEPH: *The Law of Marine Insurance and Average.* Ninth Edition. Two Vols. London, 1914.

CHALMERS, M. D., & OWEN, DOUGLAS: *The Marine Insurance Act,* 1906. London, 1907.

CONGDON, ERNST W.: *General Average; Principles and Practice in the United States.* New York, 1913.

DUNHAM, HOWARD P., Editor and Compiler: *The Business of Insurance.* i, c. 4, pp. 232-67.

GOW, WILLIAM: *Marine Insurance; A Hand Book.* Fourth Edition. London, 1913.

GOW, WILLIAM: *Sea Insurance According to British Statute.* London, 1914.

Hearings on Marine Insurance before the Subcommittee on the Merchant Marine and Fisheries, House of Representatives, 66th Congress, 1st Session.

HUEBNER, S. S.: *History of Marine Insurance in the United States.* Yale Readings in Insurance, ii, pp. 294-331.

HUEBNER, S. S.: *Report on Status of Marine Insurance in the United States.* Washington, 1920.

LAZARUS, GEO. MAITLAND: *The Law Relating to Insurance on Freight.* London, 1915.

LOWNDES, RICHARD: *Law of General Average, English and Foreign.* Fifth Edition. London, 1912.

MARTIN, FREDERICK: *History of Lloyd's and Marine Insurance in Great Britain.* London, 1876.

OWEN, DOUGLAS: *Ocean Trade and Shipping.* Cambridge Naval and Military Series, 1914.

OWEN, DOUGLAS: *Marine Insurance Notes and Clauses.* Third Edition. London, 1890.

PHILLIPS, WILLARD: *Treatise on the Law of Insurance.* Two Vols. Fifth Edition. New York, 1867.

RAVEN, A. A.: *The Policy Contract in Marine Insurance.* Yale Readings in Insurance, 1904, ii, pp. 332-351.

RICHARDS, GEORGE: *A Treatise on the Law of Insurance.* Third Edition, cc. ix, x, xix, xx. New York, 1912.

RUSH, BENJAMIN: *Marine (Hull) Insurance.* Address before the Insurance Society of New York, 1918.

RUSH, BENJAMIN: *A Brief History of Marine Insurance with an Explanation of the Ordinary Marine Cargo Form.* An Address before the Fire Insurance Society at Philadelphia, 1916.

TEMPLEMAN, FREDERICK: *Marine Insurance; Its Principles and Practice.* Third Edition. London, 1918.

WINTER, WILLIAM D.: *Marine Insurance; Its Principles and Practice.* New York, 1919.

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